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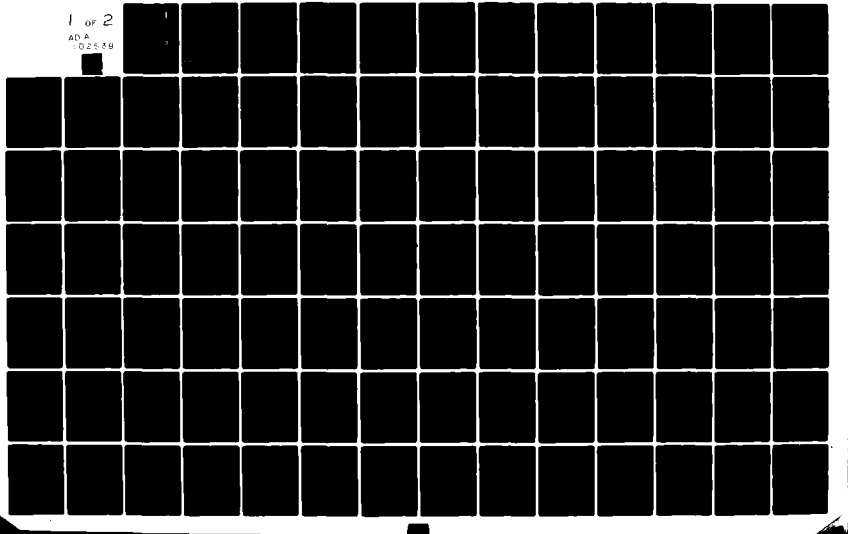

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ANALYSIS OF CURRENT POLICIES AND PRACTICES REGARDING DATA RIGHTS IN COMPETITIVE WEAPON SYSTEM ACQUISITIONS

31 DECEMBER 1980

FINAL TECHNICAL REPORT
CONTRACT NO. MDA-903-80-G-0299
TASK ORDER 80-1

PREPARED FOR

DEFENSE SYSTEMS MANAGEMENT COLLEGE (DSMC)
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20. ABSTRACT (Continue on reverse side if necessary and identify by block number)

This final report discusses the research and analysis of current policies and practices regarding data and data rights in competitive weapon system acquisitions. Data and data rights problems are discussed, based on in-depth interviews with Program Office personnel and analysis of historical data of the following competitive weapon system acquisitions: ASPJ, C-5A Mod, DIVAD, E-2(C), E-4, F-18, Flight Simulator, HARM, KC-135, NGT, SES, XM-1 Tank, and

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20. Abstract (continued)

XM-1 120 mm Gun. Based on the research, observations and suggested corrective actions to policies and practices are presented. A taxonomy of data and data rights and a dictionary of related terms were also developed as a result of the research. In addition, an appendix of relevant Defense Acquisition Regulation (DAR)/Armed Services Procurement Regulation (ASPR) clauses is included in the report, as is a listing of references and a bibliography.

PREFACE

This final report on the analysis of current policies and practices regarding data rights in competitive weapon system acquisitions was prepared for the Defense Systems Management College (DSMC), Fort Belvoir, Virginia 22060. Inclusive dates of the research by Doty Associates, Inc. (DAI) were from 1 June 1980 through 31 December 1980. This technical effort was accomplished under contract number MDA 903-80-G-0299, Task Order 80-1. The Contracting Officer's Technical Representative (COTR) for the project was Mr. Terry Hannah of DSMC.

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1. INTRODUCTION

Data, defined herein as recorded information, regardless of form or characteristic, is an indispensible element in the acquisition of major weapon systems. This report deals primarily with data developed and provided by government contractors, and not with data generated internally between and among government agencies.

In addressing data and associated data rights, the entire life-cycle of the weapon system must be reviewed. Data submitted in support of early funded studies may form the basis for the development of a system, which, as it moves through its life-cycle, will create data implications for twenty five (25) years or more. In looking back through the historical development of the government's rights in data policy, it was only fifteen years ago that the "public/private" expense doctrine for the determination of rights was first introduced.

An increased knowledge by individuals involved in data requirements definition, data management, data analysis, and policy making will be beneficial to the entire weapon system acquisition process. In reality, all individuals involved in the requirements determination, system acquisition and overview functions must have an appreciation of the scope of the data problem, since data, along with the spoken word, is the way we communicate information.

This report is intended to assist program managers in fulfilling their responsibilities relating to data management and in acquiring rights in data sufficient to support its intended use. Each manager must evaluate the contents of this report in light of his own particular situation. However, components of the report and suggestions as to their use are presented below.

1. General Taxonomy of Data, Section 3.2. This classification structure familiarizes the user of this report with the types of data that can arise from government contracts and with some of the circumstances which surround its submittal that are pertinent to determining rights in data. A legend to the structure is included to describe the meaning which attaches to terms used in the structure.

2. Special Taxonomy of Data and Data Rights, Section 3.3. The special taxonomy of data and data rights represents a dynamic structure easily adaptable to changes in policy and regulations. It conveys to the user a sense of the underlying logic which determines the relationship between data and data rights. The special taxonomy serves as a general guide and includes references to DAR (ASPR) clauses, which can be consulted for more in depth guidance.

3. Data and Data Rights Objectives, Policies, and Procedures, Section 4. The history of data management provides the user with a framework for analyzing current developments in DoD's data management program. A history of DoD's rights in data policy is also presented as well as a discussion of current issues relating to rights in technical data, software data, financial data, and administrative/management data. Current developments in government patent policy are also discussed in this section. Contract disputes relating to rights in data were analyzed and some of the recurring themes are presented to highlight potential problem areas and to give some idea as to the manner in which they have been resolved in the past.

4. Study Results and Recommendations, Section 5. Recommendations are made in those areas identified as pertinent to program management. Both data management and rights in data are addressed. These observations and recommendations must be assessed in light of each program office's particular circumstances.

5. Appendix A. This appendix includes pertinent DAR (ASPR) clauses. Many questions relating to rights in data can be resolved through use of Appendix A rather than requiring access to the full set of DAR (ASPR) regulations.

6. Dictionary. The dictionary familiarizes the user of this report with terms and acronyms relating to data management and rights in data. Each term/acronym is referenced.

2. EXECUTIVE SUMMARY

This executive summary provides an overview of the project from the study requirements through the presentation of study results.

2.1 Study Requirements. This section provides a description of the requirements of study as specified in the Task Order. Scheduled subtasks and deliverables are addressed.

The study requirements were based on two research tasks and one status review task. The three tasks were to be conducted within the total period of performance of seven months. This was an ambitious effort, but yet one which was successfully accomplished. The final contract deliverable is this Final Technical Report. The requirements for each of the contract tasks are presented below.

Task A - Data Classification

The requirement of this task was to define and classify all types of data and data rights that could be associated with or result from government contracts. The classification of data is addressed by the general taxonomy of data. Two other specific products were to be provided: first, a special taxonomy of data and data rights; and second, a dictionary of related terms. Both the general taxonomy of data and the special taxonomy of data and data rights are presented in Section 3 of this report. The dictionary of terms follows Appendix A.

Task B - Data Analysis

This task called for the selection of at least twelve (12) major competitive weapon system acquisitions and a collection of historical information concerning data and data rights activities. The information collected was then to be analyzed in terms of various policy guidance, and recommendations provided. The Department of Research and Information, Defense

Systems Management College (DSMC) was to have approval rights over the systems selected.

Task C - Status Reviews

This task included the preparation and submission of monthly progress reports and the presentation of formal status briefings at DSMC every sixty days.

2.2 Study Approach. In performing the research for the study effort, three separate paths were taken in parallel. These three paths were:

- Document reviews,
- Expert interviews, and
- Program office interviews.

The document review activity took the form of extensive searches through the facilities of the Federal Legal Information through Electronics (FLITE) Center, operated by the Judge Advocate General's Department, USAF, on-site review of legal and procurement material at the General Accounting Office (GAO) Library, the library of the Office of Management and Budget (OMB), and the Library of the Federal Acquisition Institute. The FLITE data base generated over 275 administrative and judicial decisions relating to data and data rights. Following the review of the abstracts of these actions, the full texts of over 90 Comptroller General decisions were reviewed. Other sources consulted for legal background included decisions of the Armed Services Board of Contract Appeals and court cases from the Federal Supplement. The major procurement studies that were reviewed included the DOD-CODSIA Advisory Committee for Management Systems Control (March 1968), the Blue Ribbon Defense Panel (1970), the Report of the Commission on Government Procurement (1972), and the Defense Science Board Report of the Task Force on Specifications and Standards (1977).

Expert interviews were conducted with government personnel including personnel from the Office of the Secretary of Defense, members of the Management Information Analysis Group (MIAG), elements of the Military Departments, and a representative of the Office of Federal Procurement Policy. Additional interviews were conducted with members of the academic community who specialize in contract law, including data and data rights. These interviews, along with in-depth reviews of government directives, provided the policy framework relating to data management and data rights.

The third set of activities consisted of interviews conducted with representatives of thirteen Project/Program Offices. These interviews were highly beneficial in that there was a wide range of views expressed, and very candid comments were made concerning the acquisition process as well as data and data rights. The thirteen systems reviewed were:

System	Military Department	Location
XM-1 Tank	Army	Warren, Michigan
XM-1 120 mm Gun	Army	Dover, New Jersey
DIVAD	Army	Dover, New Jersey
C-5A Mod	Air Force	Dayton, Ohio
Next Generation Trainer (NGT)	Air Force	Dayton, Ohio
E-4	Air Force	Bedford, Massachusetts
Flight Simulator	Air Force	Dayton, Ohio
KC-135	Air Force	Dayton, Ohio
E2-C	Navy	Washington, D.C.
F-18	Navy	Washington, D.C.
SES	Navy	Washington, D.C.
ASPJ	Joint	Washington, D.C.
HARM	Joint	Washington, D.C.

The interviews were conducted at the Project/Program Office locations indicated. All the offices were very cooperative and were assured that the interviews were in no way an audit, but served only to investigate the role of data and data rights within the overall acquisition process.

Briefings were presented at the Defense Systems Management College in early August and early October for the purpose of keeping all personnel

involved in the project abreast of the study activities. These reviews contributed greatly to the successful completion of this project.

2.3 Study Results. Task A of the statement of work required that (1) all types of data and data rights tnat can result from government contracts be defined and classified; that (2) a special taxonomy of data and data rights be constructed; and that (3) a dictionary of related terms be developed.

The classification of data and data rights takes the form of a work breakdown-like structure which divides data into six group-level categories with each group subsequently further defined and classified. At the top level, the general taxonomy of data classifies data according to (1) its generic type, (2) use, (3) the authority under which it is submitted, (4) the source, (5) the media thru which it is submitted, and (6) the legal protection afforded to the data. Accompanying the general taxonomy of data is a legend, which explains the meaning ascribed to each element in the structure (through Level 3).

The general taxonomy of data was conceived as an integral part of the special taxonomy of data and data rights. This special taxonomy is a logic flow which relates the circumstances surrounding the submittal of the data (many of which are addressed in the general taxonomy of data) and the government's policy with respect to rights in data submitted to it. The special taxonomy of data and data rights is intended as a general purpose guide which conveys a sense of the logic which underlies the government's policy.

The accompanying dictionary of terms relating to data and data rights includes nearly 120 terms and acronyms whose definitions are referenced to over 40 sources.

Task B of the statement of work required an analysis of current practices relating to data management in major systems acquisition program offices and an assessment of the impact of the government's rights in data policies, and particularly those of DoD.

DoD's policy with respect to rights in data is communicated primarily through DAR(ASPR). In essence, contemporary policy is very similar to that promulgated in 1964, at which time the government asserted its need for data regardless of its proprietary nature and applied the private expense concept to determine rights in data. This revised the policy in effect from 1957 to 1964 under which contractors delivered data with holes literally cut out of it. Under the 1964 change, the burden of proof with respect to the proprietary nature of data also shifted from the government to the contractor. The current basic data clause, DAR (ASPR) 7-104.9(a), is dated March 1979 and has been expanded to include computer software. It establishes two types of rights relating to software (restricted and unlimited) and two types of rights relating to all other technical data (limited and unlimited). The clause does not specifically address financial data or administrative/ management data.

The legal protection available to developers of software is as yet unclear. Although the private expense concept is still applied to determine rights in data, developers of software may seek to protect their product as a trade secret, as a copyrighted work, or as a patented invention. Complex legal issues arise when protection is sought under trade secrecy and copyright provisions simultaneously. In addition, the patentability of software is still not settled, and, in light of the new government patent policy established by PL 96-517, special questions are raised with respect to small business firms and nonprofit organizations contracting to DoD for software development.

The new patent policy enunciated in PL 96-517 permits small businesses and nonprofit organizations to take title to inventions made and patented under government contracts. Provisions originally included in the House version of the bill permitted large contractors to take a "limited" title in patented inventions resulting from government contracts. The provisions relating to large contractors were, however, deleted in the bill's final form and proponents have made known their intention to reinstate these provisions. Thus, government patent policy may be changed again in the near future.

To some degree, the provisions of the Freedom of Information Act (FOIA) have made contractors reluctant to submit business sensitive data, both

technical and otherwise, to the government. Though protected under Exemption 4 of the FOIA, by the definition of "record" written into DODD 5400.7, which governs the release of data by DoD subsequent to an FOIA request, and thru additional protection made a part of DODD 5400.7's provisions, contractors can envision a situation whereby the government would be required to release business sensitive data.

The history of DoD's data management program was traced from the original issuance of DODI 5010.12 in 1964 (the same time at which the rights in data policy was revised) through the present. The top level objectives of the DoD and Departmental data management programs are to (1) prevent the establishment of unauthorized or duplicative information requirements, and to (2) assure optimum effectiveness and economy in the flow of information within, from, and to the DoD. To these ends, some of the recurring policy aspects of DoD and Departmental instructions, directives, and memos relating to data management are as follows:

1. To ensure economy and consistency, contract data requirements will be selected from an approved list (as of this date, the AMSDL).

2. Delivery, and even ordering, of data will be deferred until such time as it is needed.

3. All contract data requirements will be listed in one place in the contract (the CDRL, Form DD 1423).

4. Each RFP is required to include data requirements.

5. Data will be acquired in the contractor's format to the maximum possible extent.

6. Data will be ordered on a cost/benefit basis (one of the costs being that of not having the data).

7. Data requirements planning will run concurrently with systems planning.

8. Data requirements will be reviewed by an office other than that of the initiator.

9. Offerors will price data in their proposals submitted for evaluation.

These policies are found with a degree of consistency in DoD guidance (DODI 5000.2, DODD 5000.19, DODI 5000.32, DODI 5010.12), and in that issued by the military departments (AR 700-51, NAVMATINST 4000.15A, and AFR 310-1). Although DoD's original program has been expanded beyond technical data through departmental guidance and subsequent DoD directives and instructions, many of the data management related problems highlighted in studies conducted in the late 60's and during the 70's still exist.

The procedural aspects of the DoD's data management program seem to be well understood and properly applied in the major systems acquisition program offices visited. Current activity with respect to the DoD's data management program is primarily concerned with standardization, closer association of data items and the MIL STDS and MIL SPECS which generate them, and the tailoring of these STDS, SPECS, and their attendant data requirements when they are applied in contracts.

As a result of the literature survey and the series of interviews, recommendations are presented with the program manager in mind. With respect to rights in data, negotiation strategies applicable to the acquisition of rights in data sufficient to support its intended uses are presented. These strategies include (1) predetermination and specific acquisition, (2) the pricing of options to acquire rights in data, (3) the use of follow-on contracts to acquire rights in data, and (4) the acquisition by the government of licenses to use the data. The special treatment accorded to data contained in proposals is addressed as are the consequences of the improper disclosure of proprietary data. Issues relating to rights in software data are discussed along with those relating to the Freedom of Information Act. The report concludes with a discussion of how the program manager can use the report (Section 5.4 of the main report).

3. DATA CLASSIFICATION AND TAXONOMY DEVELOPMENT

3.1 Introduction. Task A consisted of three separately identifiable subtasks which, while interrelated, were bounded by DAI and addressed individually. These subtasks are defined as follows:

Subtask A1: Develop a general taxonomy of all types of data that can be associated with or result from government contracts.

Subtask A2: Develop a special taxonomy of data rights using the classifications and definitions in the general taxonomy.

Subtask A3: Develop a dictionary of terms relating to data and data rights.

This section will address each of the subtasks as defined above. The result of each task will be presented and the rationale supporting these results will be discussed where appropriate.

3.2 Subtask A1. Define and classify in a general taxonomy, all types of data and data rights that can be associated with or result from government contracts. The results of this task are used in the related task of developing a special taxonomy of data rights. For example, a specific "type" of data can be defined or described by different elements contained within the classification structure, given changes in circumstances surrounding the government's acquisition of that data. The interplay of these circumstances defines the government's rights in data. The data classification in the data taxonomy is a Work Breakdown Structure (WBS)-like scheme with each lower level more specifically classified than the next higher level element from which it was derived. At the top or first level, the classification divides data into six groups: (1) generic type, (2) use, (3) authority, (4) source, (5) media, and (6) legal protection. The classification scheme draws a rather fine line of distinction between the first two categories, Generic Type and Use. For example, the Acquisition Management Systems and Data Requirements Control List (AMSDL) attempts to use the function to which the data is put as the determinant of a high level generic breakout. The AMSDL's attempt is somewhat

flawed, however, with categories of data being defined not by the functional use to which the data is put, but rather by similarities in the format or content of the data. The General Taxonomy of Data developed by DAI is presented in Table 3-1 and makes a distinction between these two data classification methods. The legend in Table 3-1 provides explanations of these two terms, Generic Type and Use, as they are employed within the structure. Note that the functional categories presented in the AMSDL make up the third level of this classification within the group heading, Generic Type. The data subelements comprising the Level 4 breakout of each Generic Type of data in Level 3 were identified as a result of analyzing applicable Data Item Descriptions (DIDs) and establishing descriptive labels under which they are grouped. Since a particular type of data may be included under only one heading, judgment was exercised to classify the data under one particular heading and not another.

Pursuant to the further requirements of Subtask A, a taxonomical classification structure relating to rights in data is presented in Figure 3-1. This classification addresses data rights associated with the three subgroups of the General Taxonomy: 1.1, Technical Data; 1.2, Nontechnical Data (except Software Data); and 1.3, Software Data. Each subgroup represents the second level breakdown of 1.0, Generic Type of data in Table 3-1. The ability to associate certain rights in data with the different generic types of data presented in the data taxonomy provided the basis for developing the Special Taxonomy of Data Rights, which is discussed in the following section.

3.3 Subtask A2. Develop a Special Taxonomy of Data Rights. The objective of this subtask was to develop a taxonomy of data rights. The development of this relational structure requires an in-depth knowledge of (1) the circumstances surrounding the acquisition of data pertinent to the determination of government rights in data, and (2) the policy of the Department of Defense (DoD) with respect to its acquisition of rights in data. DoD policy is communicated in and implemented through Defense Acquisition Regulation (DAR)/Armed Services Procurement Regulation (ASPR). Circumstances that are pertinent to the determination of government rights in data are included within the data classification scheme developed pursuant to Subtask A1. Thus, the development of a special data rights taxonomy required

TABLE 3-1. GENERAL TAXONOMY OF DATA.

LEVEL 1 (GROUP)	LEVEL 2 (SUBGROUP)	LEVEL 3 (ELEMENT)	LEVEL 4 (SUBELEMENT)
1.0 Generic Type	1.1 Technical Data	1.1.1 Engineering and Configuration Documentation Data	1.1.1.1 Engineering Drawings and Associated Lists
			1.1.1.2 Engineering Release Records
			1.1.1.3 Engineering Plan Reports
			1.1.1.4 Revisions/Changes to Drawings & Designs
			1.1.1.5 Installation Drawings
			1.1.1.6 Hardware/Software/System Specifications
			1.1.1.7 Process Specifications
			1.1.1.8 Software Documentation (except Manuals)
			1.1.1.9 Configuration Management Plans, including Audit Plans
			1.1.1.10 Configuration Status Accounting Reports
			1.1.1.11 Standardization Reports of Common Items
			1.1.1.12 Design Review Data Packages
			1.1.1.13 Technical Data Package
		1.1.2 Human Factors Data	1.1.2.1 Human Engineering Program Plans
			1.1.2.2 System Safety Studies and Reports
			1.1.2.3 Personnel Requirements Studies and Reports
			1.1.2.4 Training Requirements Plans, Studies, and Reports
			1.1.2.5 Personnel Subsystems Plans, Studies, and Reports
		1.1.3 Logistic Support Data (See also 1.1.2, 1.1.4, 1.1.9 for related types of data)	1.1.3.1 Integrated Logistics Support Management Plan
			1.1.3.2 Integrated Logistics Support Plan (ILSP)
			1.1.3.3 Transportation/Transportability Plans, Requirements, and Reports
			1.1.3.4 Packing, Packaging and Handling Plans, Requirements, and Reports
			1.1.3.5 Preservation and Storage Plans, Requirements, and Reports

TABLE 3-1. GENERAL TAXONOMY OF DATA (continued).

LEVEL 1 (GROUP)	LEVEL 2 (SUBGROUP)	LEVEL 3 (ELEMENT)	LEVEL 4 (SUBELEMENT)
			1.1.3.6 Maintenance Plans, Requirements, Instructions
			1.1.3.7 Maintenance Data Reports
			1.1.3.8 Material Support Plans
			1.1.3.9 Material Deficiency, Stocking, and Issuance Data
			1.1.3.10 ILS Facilities, Studies, and Support Plans
			1.1.3.11 Support Equipment Lists
		1.1.4 Technical Publications	1.1.4.1 Technical Manuals Plans
			1.1.4.2 Installation Manuals and Procedures Data
			1.1.4.3 Commercial Equipment Manuals
			1.1.4.4 Hardware/Software Maintenance Manuals
			1.1.4.5 Quality Program Plans, Procedures, and Manuals
			1.1.4.6 Hardware/Software Operating Manuals
		1.1.5 Procurement/Production Data	1.1.5.1 Producibility/Value Engineering Plans and Reports
			1.1.5.2 Production/Production Facilities Plans, Studies, Reports
			1.1.5.3 Special Production Tooling Lists
			1.1.5.4 GFE/Materiel Status Reports
			1.1.5.5 Reprocurement Data Packages and Lists
			1.1.5.6 Standardization Program Plans
		1.1.6 Related Discipline Requirements Data	1.1.6.1 Product/Quality Assurance Program Plans & Status Reports
			1.1.6.2 Reliability Program Plans & Status Reports
			1.1.6.3 Maintainability Program Plans & Status Reports
			1.1.6.4 Survivability/Vulnerability Program Plans
			1.1.6.5 Electromagnetic Compatibility Plans, Reports
			1.1.6.6 Quality Inspection Reports

TABLE 3-1. GENERAL TAXONOMY OF DATA (continued).

LEVEL 1 (GROUP)	LEVEL 2 (SUBGROUP)	LEVEL 3 (ELEMENT)	LEVEL 4 (SUBELEMENT)
			1.1.6.7 Reliability/Failure Analysis Reports
			1.1.6.8 Maintainability Analysis Reports
		1.1.7 System/Subsystem Analyses Data	1.1.7.1 Scientific/Technical Systems Analyses, Studies, Reports
			1.1.7.2 Performance Documentation, Studies, and Reports
			1.1.7.3 Facilities Design Studies, Reports, Drawings (non-ILS)
			1.1.7.4 Systems Engineering Management Plans, Analyses
			1.1.7.5 Systems Design Trade Studies
			1.1.7.6 Schematic Block Designs, Functional Flow Sheets
			1.1.7.7 Motion, Loads, Weight, and Balance Analyses, Reports
			1.1.7.8 Reliability, Maintainability, Vulnerability Design Analysis Report
		1.1.8 Test Data	1.1.8.1 Hardware/Software Test Program Plan Reports
			1.1.8.2 Equipment/Components/System Acceptance Test Reports
			1.1.8.3 Equipment/Component/System Performance Test Reports
			1.1.8.4 Test Procedures Reports
			1.1.8.5 Human Factors Test Plan and Test Results Reports
			1.1.8.6 Design Requirements (Reliability, Survivability, Compatibility) Test Results Reports
		1.1.9 Provisioning Data	1.1.9.1 Spare/Repair Parts List
			1.1.9.2 Repair Parts and Support Plans
			1.1.9.3 Long Lead Time Items Lists
			1.1.9.4 Provisioning Technical Documentation

TABLE 3-1. GENERAL TAXONOMY OF DATA (continued).

LEVEL 1 (GROUP)	LEVEL 2 (SUBGROUP)	LEVEL 3 (ELEMENT)	LEVEL 4 (SUBELEMENT)
			1.1.9.5 Repairable Items Lists 1.1.9.6 Consumption/Usage Reports 1.1.9.7 Federal Item Identification 1.1.9.8 Machine Readable Parts & Support Equipment Identification Records
	1.2 Nontechnical Data (exc. Software)	1.2.1 Financial Data	1.2.1.1 Manpower Cost and Utilization Reports 1.2.1.2 Functional Cost Reports 1.2.1.3 Performance and Cost Reports 1.2.1.4 Schedule and Cost Reports 1.2.1.5 Technical Manual Cost Reports 1.2.1.6 Unit Cost Report 1.2.1.7 Cost Estimates and Analyses
		1.2.2 Administrative/Management Data	1.2.2.1 Contractor Work Breakdown Structure 1.2.2.2 Design to Cost Progress Reports 1.2.2.3 Abstract of New Technology 1.2.2.4 Management Plans and Management Systems Reports 1.2.2.5 Program/Contract Funds Status Reports 1.2.2.6 Program Schedules and Milestones 1.2.2.7 Nontechnical Progress and and Status Reports 1.2.2.8 Manpower Reports 1.2.2.9 Agendas, Presentation Materials, Minutes 1.2.2.10 Data Accession List
	1.3 Software Data[1]	1.3.1 Computer Program Data	1.3.1.1 Operating Systems Data 1.3.1.2 Applications Programs Data 1.3.1.3 Utilities Programs Data
		1.3.2 Computer Data Base Data	

[1] Be sure to consult the legend associated with this classification structure to differentiate between the terms 1.3 Software Data and 1.1.1.8 Software Documentation Data as they are used in this classification.

TABLE 3-1. GENERAL TAXONOMY OF DATA (continued).

LEVEL 1 (GROUP)	LEVEL 2 (SUBGROUP)	LEVEL 3 (ELEMENT)	LEVEL 4 (SUBELEMENT)
2.0 Use	2.1 System Acquisition Management	2.1.1 Planning Data	
		2.1.2 Controlling Data	
		2.1.3 Evaluation Data	
	2.2 Logistic Support	2.2.1 Installation Data	
		2.2.2 Operation Data	
		2.2.3 Maintenance Data	
		2.2.4 Provisioning Data	
		2.2.5 Personnel and Training Data	
	2.3 Reprocurement		
3.0 Authority	3.1 CDRL Item		
	3.2 DAR (ASPR) Data Deliverable		
	3.3 Bid/Proposal Requirements		
	3.4 Informal Agreement		
4.0 Source	4.1 Solicited Bid/Proposal		
	4.2 Unsolicited Proposal		
	4.3 Contractor		
	4.4 Subcontractor		
	4.5 Government Agency		
	4.6 Foreign Government		
5.0 Media	5.1 Human Readable, Unassisted	5.1.1 Conventional Hard Copy	
	5.2 Human Readable Data, Assisted	5.2.1 Microfilm/Microfiche	
		5.2.2 Video Tape/Film	
		5.2.3 Audio Tapes/Records	
		5.2.4 Mylar Film	
	5.3 Machine Readable Data	5.3.1 Punched Cards	
		5.3.2 Magnetic Tape	
		5.3.3 Disks/Diskettes	
		5.3.4 Core Memory	
6.0 Legal Protection	6.1 Patent		
	6.2 Copyright		
	6.3 Trade Secret		
	6.4 None		

TABLE 3-1. GENERAL TAXONOMY OF DATA (continued).

LEGEND

Each term in DAI's classification structure through Level 3 is explained in this legend. The terms are arranged by Level, beginning with Level 1. Within each Level, terms are presented in numerical order (sorted left to right in WBS fashion).

LEVEL 1

1.0 Generic Type - A classification structure with broad general categories of data determined according to similarities in the content and/or format of the data.

2.0 Use - Data classified according to the purpose for which it was acquired.

3.0 Authority - Data classified according to the degree to which its submittal is required as a matter of compliance.

4.0 Source - Data classified according to the developer/submitter of the data.

5.0 Media - A data classification based upon the physical form in which the data is submitted.

6.0 Legal Protection - Data classified according to the protection afforded the data by law.

LEVEL 2

1.1 Technical Data - Recorded information, regardless of form or characteristic, of a scientific or technical nature. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and documentation related to computer software.

1.2 Nontechnical Data (except Software) - Recorded information in any form of a nonscientific or nontechnical nature, including financial data, administrative/management data, and all data not in the categories of Technical Data or Software Data.

TABLE 3-1. GENERAL TAXONOMY OF DATA (continued).

LEGEND (continued)

1.3 Software Data - Computer programs and/or computer data bases recorded in nonhuman readable form.

2.1 System Acquisition Management - Data used for planning, controlling, and evaluation.

2.2 Logistic Support - Data used in system installation to support operational requirements, for maintenance, for overhaul and repair procedures, and to provide spare parts or equipment.

2.3 Reprocurement - All data used for reprocurement of the item or items to which it pertains. Reprocurement data includes engineering drawings, specifications, manufacturing information essential to production, and test procedures.

3.1 CDRL Item - Data delivered as a result of its requirement as an item of contract performance through inclusion in the contract data requirement list (CDRL).

3.2 DAR/(ASPR) Data Deliverable - Data deliverable as a contract requirement by way of the inclusion of a DAR/ASPR clause within a contract which requires data to be delivered.

3.3 Bid/Proposal Requirement - Data submitted in a bid or proposal for the purpose of satisfying the requirements to which the bid or proposal must conform.

3.4 Informal Agreement - Data submitted by a contractor, subcontractor, or bidder in compliance with a noncompulsory government request. Compliance in this case is not an element of contract performance.

4.1 Solicited Bid/Proposal - All data which is included within a bid or proposal submitted in response to a solicitation; e.g., an IFB or an RFP. Data contained within the bid/proposal will probably be in excess of that necessary to satisfy the basic requirements relating to responsiveness.

4.2 Unsolicited Proposal - Data of any type included within a proposal submitted other than in response to a solicitation.

TABLE 3-1. GENERAL TAXONOMY OF DATA (continued).

LEGEND (continued)

4.3 Contractor - Data of any type which is submitted to the government by a prime contractor for any reason.

4.4 Subcontractor - Any type of data which is submitted to either the government or a prime contractor by a lower tier contractor; i.e., a subcontractor.

4.5 Government Agency - Data submitted to the procuring agency by another agency of the Government.

4.6 Foreign Government - Data submitted to the procuring agency by a foreign government.

5.1 Human Readable Data, Unassisted - Data which is intelligible to users without the need for transformation by any electro/optical device or by computer.

5.2 Human Readable Data, Assisted - Information which is recorded in a form that requires no electronic data processing using a computer but does require the use of simple electro/optical devices to render the data intelligible to users. Such devices might include microfilm readers and copiers, tape recorders, film projectors, video cassette players, etc.

5.3 Machine Readable Data - Recorded information in a form capable of being read by a machine and processed without any intermediary transformations other than those performed by the machine.

6.1 Patent - An official document which secures to an inventor the exclusive right to make, use, or sell his invention. The invention documentation package becomes a matter of public record, but use of the data contained therein for the purpose of making, using, or selling the patented invention without the patent holder's permission is prohibited by law.

6.2 Copyright - The exclusive legal right of an author to reproduce, publish, and sell the matter or form of a literary, musical, artistic, or other work.

6.3 Trade Secret - The legal right of an owner to restrict the use of any formula, pattern, device or compilation of information which is used in his business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process for manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers.

TABLE 3-1. GENERAL TAXONOMY OF DATA (continued)

LEGEND (continued)

6.4 None - The data is not afforded protection under any of the categories of legal protection listed above.

LEVEL 3

1.1.1 Engineering and Configuration Documentation Data - Data which define a design and identifies its components through (1) engineering drawings and associated lists and (2) through product and/or process specifications. Also included within this category is data which is related to the management of design documentation and to configuration management. Since design review packages and technical data packages contain data predominantly of this type, both packages are listed within 1.1.1, Engineering and Configuration Documentation. Note also that software documentation (except manuals) is listed within this breakdown since program/data base listings and software specifications are closely related to other types of design disclosure data included within this element of technical data.

1.1.2 Human Factors Data - Data related in that it addresses the impact of manning on systems design, such as in the area of designing systems to meet certain safety requirements, ergonomics considerations, or manning profiles. Included within this element are studies and reports which deal with the adequacy of the design with respect to safety requirements, quantitative and qualitative personnel requirements, and training requirements.

1.1.3 Logistics Support Data - This element of technical data includes plans, requirements, and reports relating to supply and general maintenance. Supply data includes that data relating to transportation, packing, packaging, handling, preservation, and storage requirements. Included within general maintenance data are maintenance plans and reports of material deficiency, stocking, and issuance data, as well as other maintenance data that is not included within the subelements of reliability and maintainability engineering data. Elements 1.1.2, 1.1.4, and 1.1.9 contain data related to logistics support, but each was deemed important enough to warrant its own classification.

1.1.4 Technical Publications - The element of technical data which includes information recorded in manuals relating to the installation, operation, and maintenance of hardware/software systems. Also contained within this element is data included in training

TABLE 3-1. GENERAL TAXONOMY OF DATA (continued).

LEGEND (continued)

manuals and other instructional materials. Note that technical manuals/publications, especially training materials, can be presented in a number of formats other than traditional hard copy.

1.1.5 Procurement/Production Data - Data which is similar in that it reflects recorded information relating to producibility, production, and production facilities plans, studies, and reports. Lists of special production tooling and data relating to the status of government furnished equipment/material are also included. Data which is assembled into reprocurement packages and data which defines standardization program plans are also included in this element of technical data.

1.1.6 Related Discipline Requirements Data - This element of data includes that recorded information which is similar in that it relates to and documents the various discipline design requirements. These requirements in the areas of reliability, maintainability, survivability, compatibility, and, to a limited extent, quality are subordinate to system level operational requirements and are really design constraints and objectives. The data in this category are reported mainly in the form of plans designed to achieve related discipline requirements as well as status reports relating to individual discipline programs.

1.1.7 System/Subsystem Analysis - This element includes data similar in nature in that it is developed in the course of systems engineering and design effort but does not include any data grouped under the element of engineering drawings and configuration documentation data. Therefore, this element contains data relating system/subsystem design efforts, which include reports as to design sufficiency with respect to related discipline requirements; data associated with motions, loads, weights, and balance analytical reports; trade-off studies; and other data products of the design process. This element also includes data associated with engineering management plans and the analysis of systems which facilitate production and logistics support.

1.1.8 Test Data - This element includes data which is developed and reported as a result of systems, equipment, and parts testing. Also included is data relating to test plans and procedures.

TABLE 3-1. GENERAL TAXONOMY OF DATA (continued)

LEGEND (continued)

1.1.9 Provisioning Data - This element of technical data includes lists of spare parts, repairable items, and long lead items. In addition it includes data which serves to identify these items, both in machine readable and human readable form. Data included in consumption/usage reports relating to spares, repairable items, support equipment, and long lead items are included within this element.

1.2.1 Financial Data - This element includes data expressed in terms of dollar expenditures, cost forecasts, and program cost/schedule status. Reports which include and collect cost data as their primary objective are included within this element even though they contain data which might properly be grouped under other element; e.g., administrative/management data and procurement/production data. Note also that other elements, such as those just mentioned, may contain also cost data. If financial/cost data is gathered as a secondary objective, the data may be classified under another element.

1.2.2 Administrative/Management Data - This element includes all data related in that it is used to administer and manage government contracts. Such data includes contractor work breakdown structures, nonfinancial program schedules and milestones, other management plans, and actual project data relating to schedule and contract funds status.

1.3.1 Computer Program Data - Recorded information relating to a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and Automatic Data Processing Equipment (ADPE) maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

1.3.2 Computer Data Base Data - Recorded information relating to a collection of data in a form capable of being processed and operated on by a computer. Note that this definition also is limited to that data which is in machine readable form.

2.1.1 Planning Data - The data used for planning operational requirements, acquisition strategy, design, production, reliability, maintainability, and logistics support.

TABLE 3-1. GENERAL TAXONOMY OF DATA (continued).

LEGEND (continued)

2.1.2 Controlling Data - The data, including design information, programming and budgeting data, and configuration management data, which is used to control or constrain the contractor's efforts.

2.1.3 Evaluation Data - This data includes studies and reports based on programming and budgeting data, estimates, systems design data, test and evaluation data, etc. It is used to select alternatives, such as proposals, systems designs, procurement strategies, etc.

2.2.1 Installation Data - Data required to perform a system installation such as manuals and instruction booklets.

2.2.2 Operations Data - Data used to support the operation of material and equipment, such as users' manuals.

2.2.3 Maintenance Data - Data required to support maintenance, overhaul and repair procedures, and spare parts specifications.

2.2.4 Provisioning Data - Technical data used to provide spare parts or equipment. Such data includes specifications, standards, drawings, photographs, sketches and descriptions, and the assembly and general arrangement drawings, schematic diagrams, wiring and cabling diagrams, etc., needed to indicate location and function of an item.

2.2.5 Personnel Training Data - Data used for personnel training needs such as manuals, sound recordings, videotapes, texts, etc.

5.1.1 Conventional Hard Copy - Includes all data submitted in a format which requires no electrical, mechanical, or optical device to make the data human readable.

5.2.1 Microfilm/Microfiche - Data delivered in the form of a reduced photographic image on film which requires the use of specialized devices to render the data human readable.

5.2.2 Videotape/Film - Information submitted in the form of magnetic recordings of visual images and sound requiring the use of special devices to render the data intelligible to humans.

TABLE 3-1. GENERAL TAXONOMY OF DATA (continued)

LEGEND (continued)

5.2.3 Audio Tapes/Records - Data submitted in the form of magnetic or physical representations of sound requiring special devices to render the information intelligible to humans.

5.2.4 Mylar Film - Information recorded onto a clear film which serves as a master copy from which many reproductions can be generated.

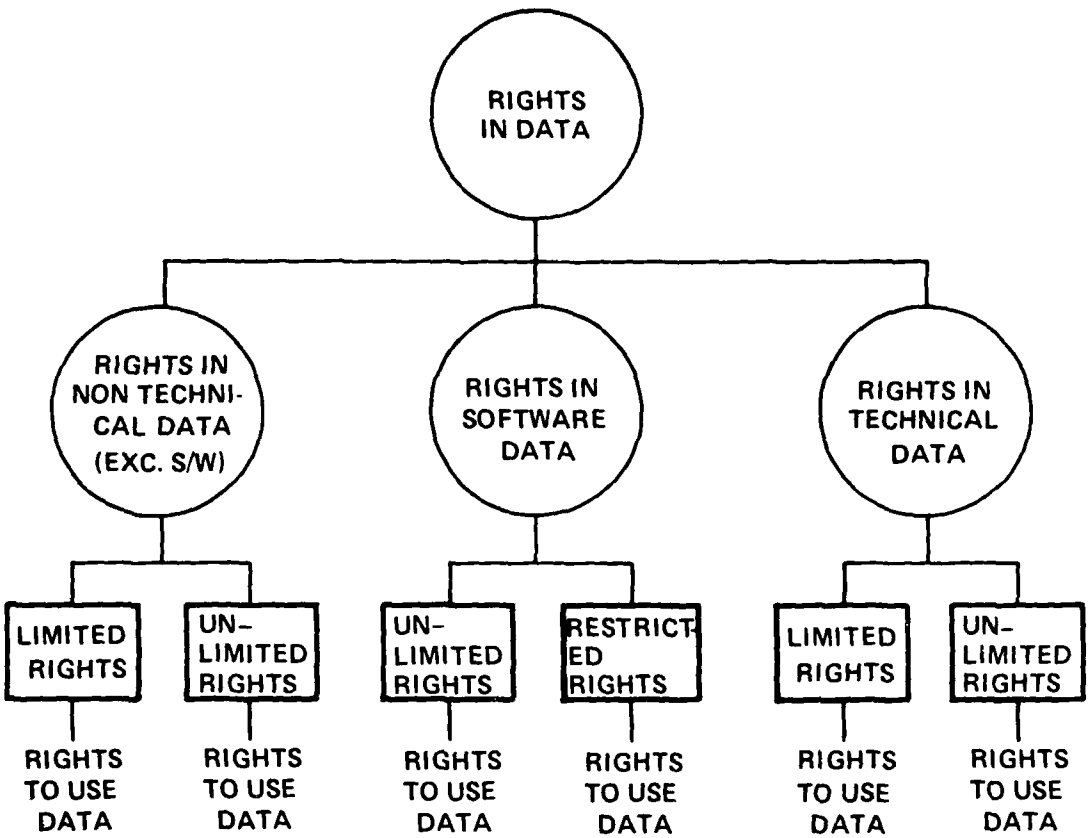
5.3.2 Magnetic Tape - Information stored in the form of electronic impulses recorded on magnetic tape in a format readable by electronic data processing machines.

5.3.3 Disks/Diskettes - Information stored in the form of electronic impulses recorded on magnetic disks/ diskettes in a form readable by electronic data processing machines.

5.3.4 Core Memory - Information Recorded in the form of magnetic representations of that information stored in the core memory of an electronic data processing machine.

LEVEL 4

Explanations and/or characterizations of usage are not provided for any Level 4 types of data since for the most part they are so specific as to be self-explanatory.



SEE THE DICTIONARY FOR DEFINITIONS OF LIMITED RIGHTS, UNLIMITED RIGHTS, AND RESTRICTED RIGHTS TO GAIN SOME INSIGHT INTO THE USAGE RESTRICTIONS (OR LACK THEREOF) WHICH ATTACH TO EACH OF THESE TYPES OF RIGHTS IN DATA.

Figure 3-1. Classification of Rights in Data.

an analysis of the numerous circumstances under which data is submitted to DoD, and to research DAR (ASPR) and other relevant references to determine what data rights are applicable. Figure 3-2 presents this approach graphically. Each data group (1.0 through 6.0) can be envisioned as tumblers in a lock, each capable of spinning independently, but constantly lining up with one another to yield various combinations of circumstances under which data is submitted. The theoretical number of combinations is extremely high, but not all such combinations make sense. For example, Software Data, by definition, can never be submitted in any media other than that which is machine readable, nor can financial data ever be accorded the legal protection afforded under patents. Thus, even though some combinations are clearly inappropriate or impossible, the very large number of permissible combinations makes it impractical for the taxonomy to be structured in such a way as to address each combination separately. Instead, the taxonomy is presented in terms of a logic flow consisting of decision points, branching instructions, and decisions that associate data and data rights. As a result, the taxonomy of data and data rights represents a dynamic structure easily adopted to changes in policy and regulations. In addition, this approach yields a structure that conveys to the user a sense of the underlying logic which determines the relationship between data and data rights by revealing the interaction of data, the circumstances surrounding its submittal, and data rights. This taxonomy is presented in Figures 3-3 through 3-21.

With reference to the above cited figures, a brief explanation relating to the taxonomy is offered. The taxonomy is a logic flow consisting of decision points, transfer instructions, and decisions themselves. Each decision point and decision is assigned a number that relates to the sequence of the logic flow. Note that numbers contained within decision points relate to narrative questions. The answers to these questions describe the circumstances that surround the submittal of the data and are pertinent to determing data rights. In addition, when branching instructions require one to leave the primary logic path for another one, the figure on which the secondary path is located includes a reference identifying the decision point at which the branch took place. Additionally, when any decision is reached on the relationship between data and data rights, an applicable DAR citation is

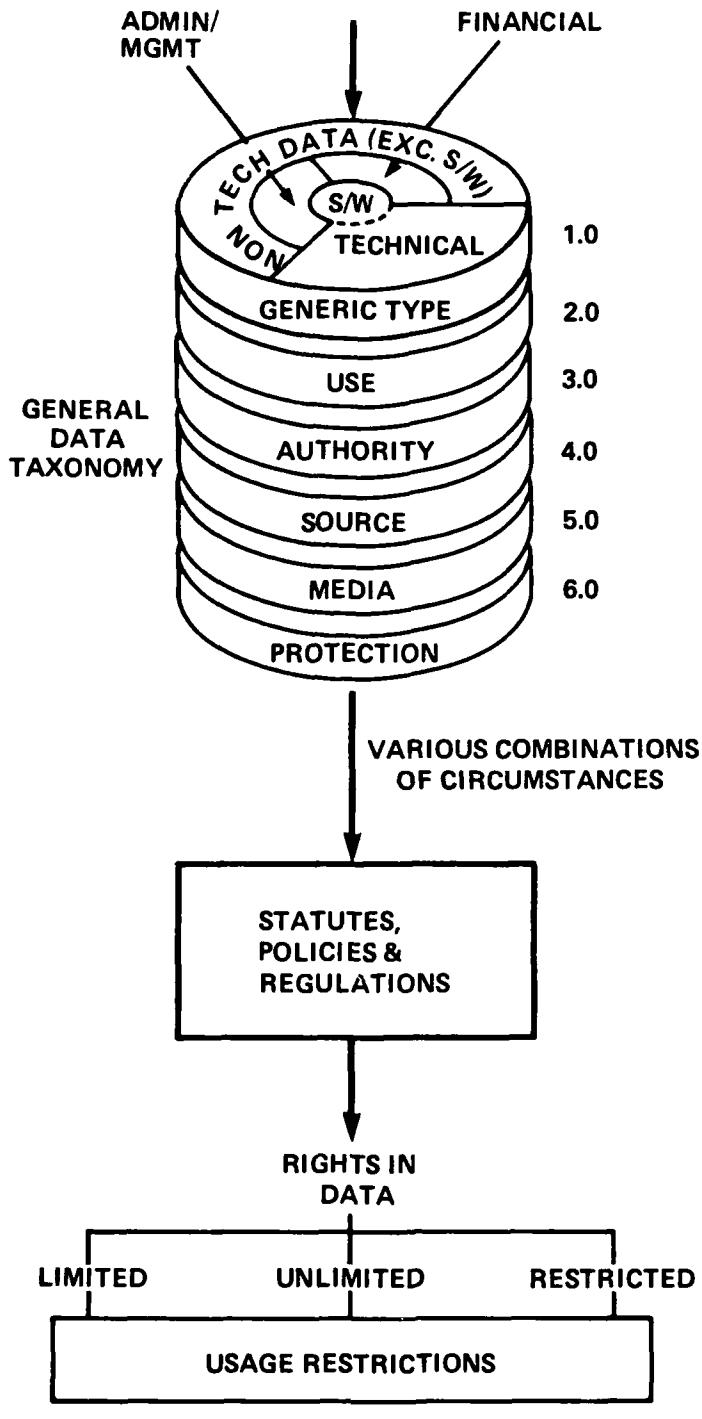


Figure 3-2. The Development of a Special Taxonomy of Data Rights.

provided in support of the decision. Narrative notes that explain further ramifications or subtleties of the decision are also included.

As a note of caution, it should be mentioned that the taxonomy of data and data rights is intended as a general purpose guide and not as an absolutely precise algorithm of government policies and regulations relating to data and data rights. This must be the case since decision points representing pertinent circumstances are paraphrased for the sake of conveying general intent and notes accompanying decisions do not address all the ambiguities or subtleties of meaning reflected in DAR. The user of this taxonomy is also encouraged to refer to Appendix A, which presents applicable DAR clauses supportive of decisions associated with data and data rights.

3.4 Subtask A3. Develop a dictionary of terms relating to data and data rights. For the results of this task, see the Dictionary following Appendix A.

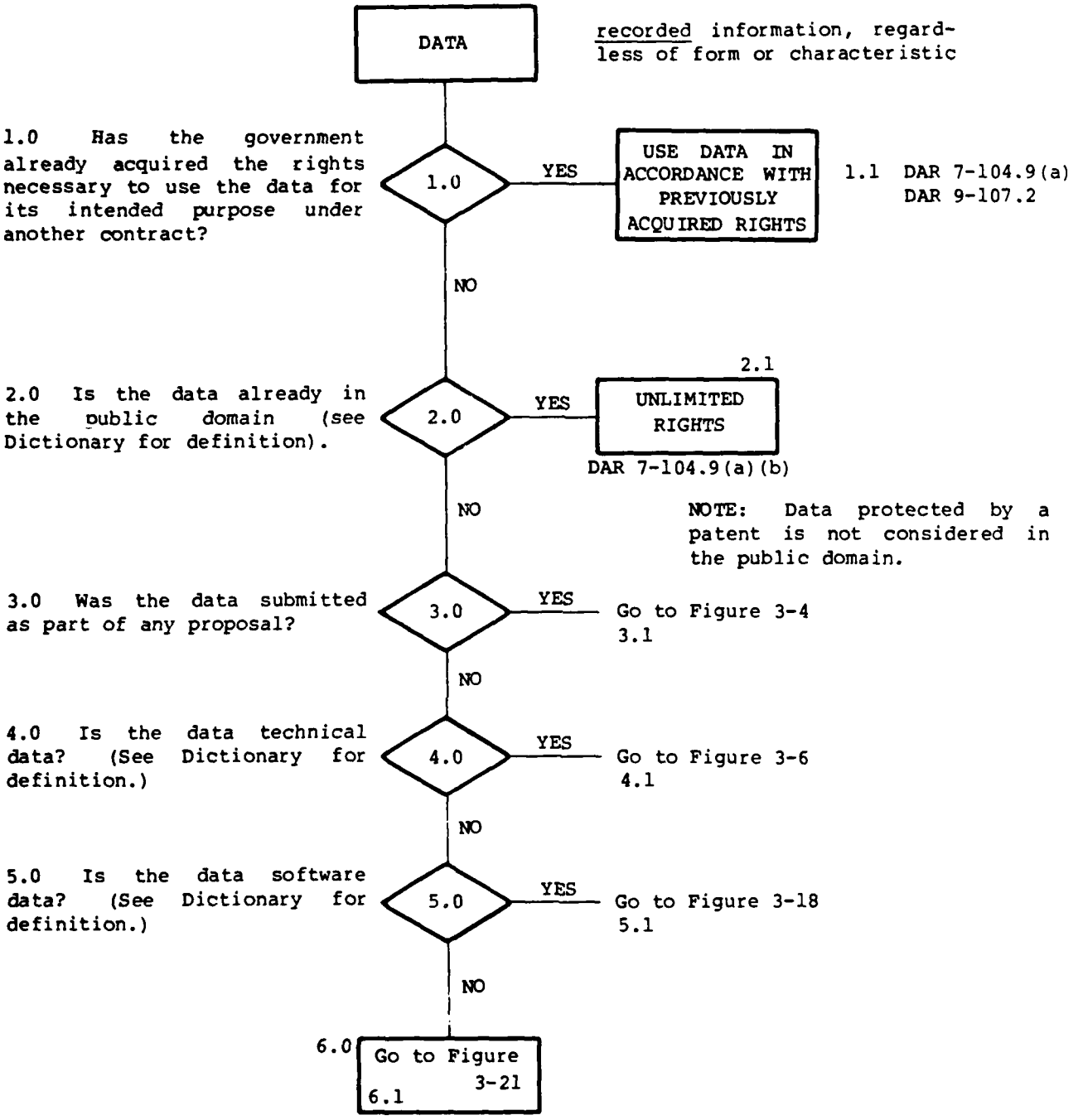
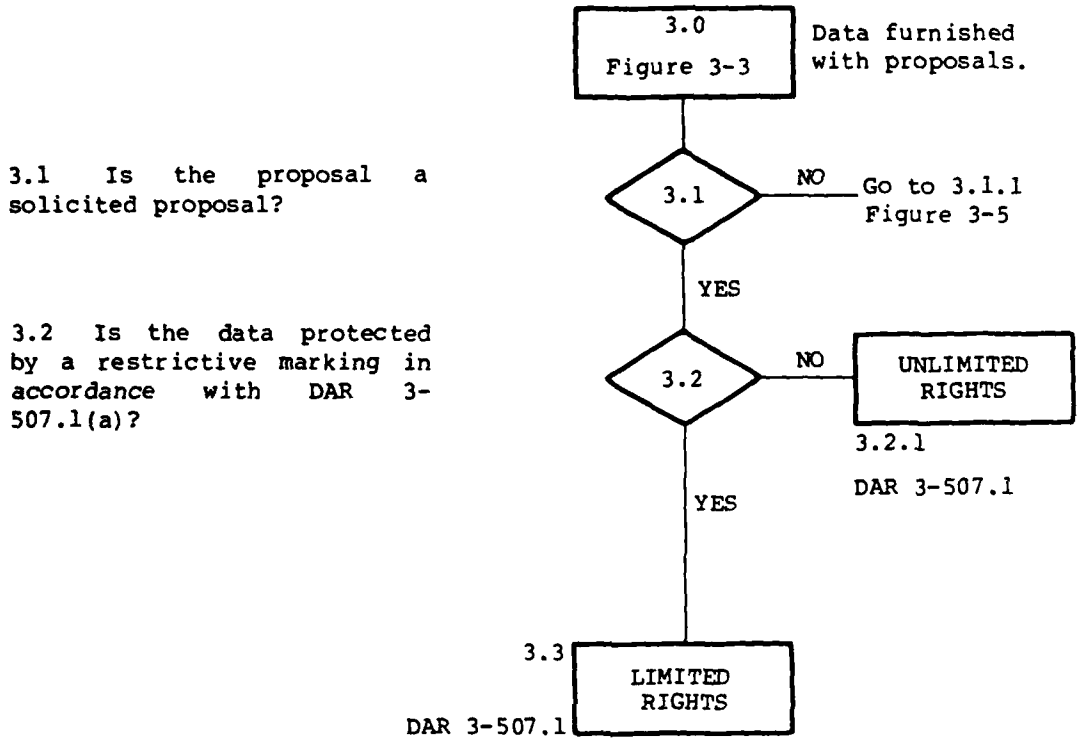


Figure 3-3. Special Taxonomy of Data Rights.



Even though all data contained in the proposal is taken with limited rights, data or records not prohibited for release under the Freedom of Information Act (and DoDD 5400.7), may be made available to the public if requested.

Figure 3-4. Special Taxonomy of Data Rights: Proposal Data.

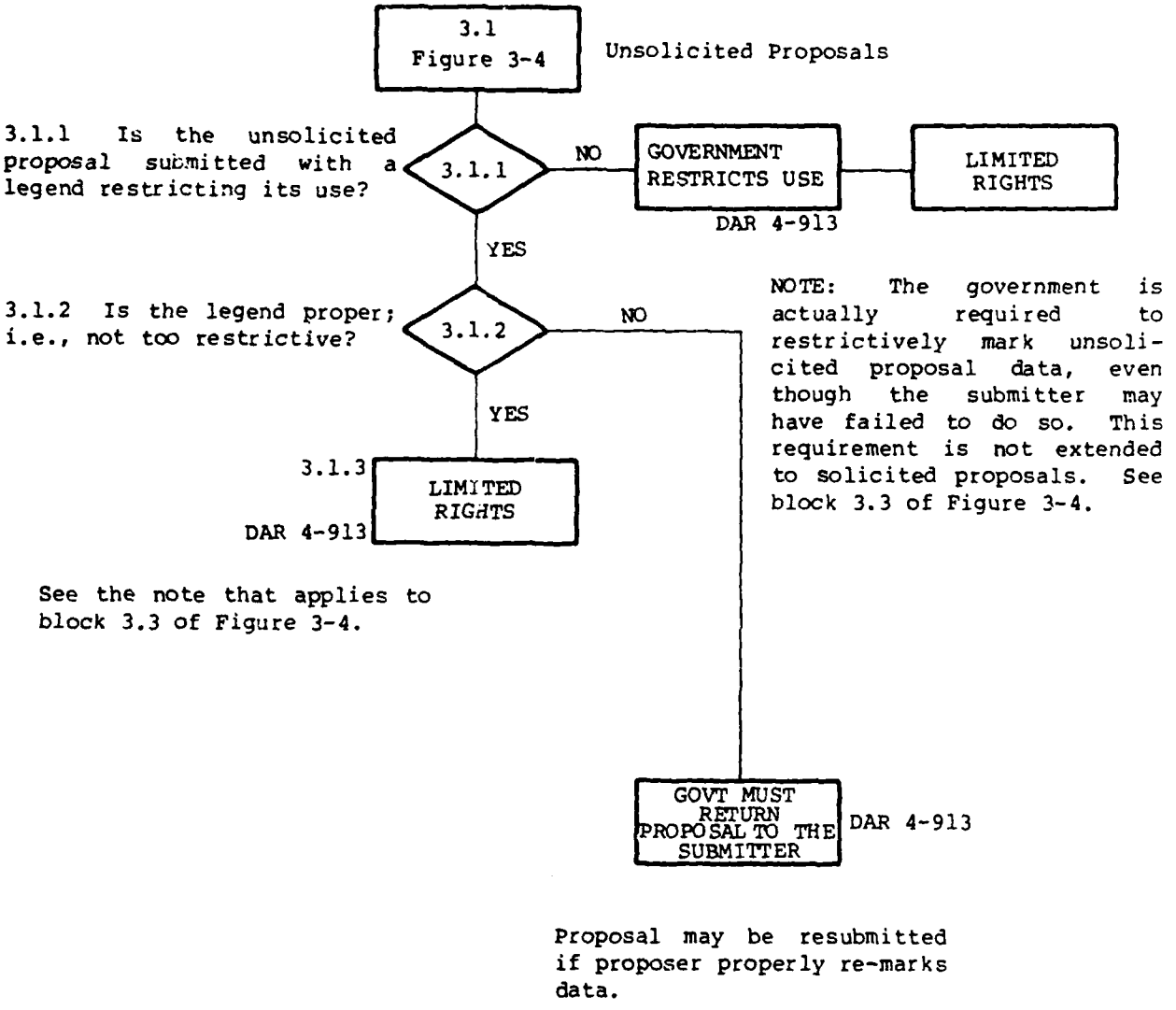
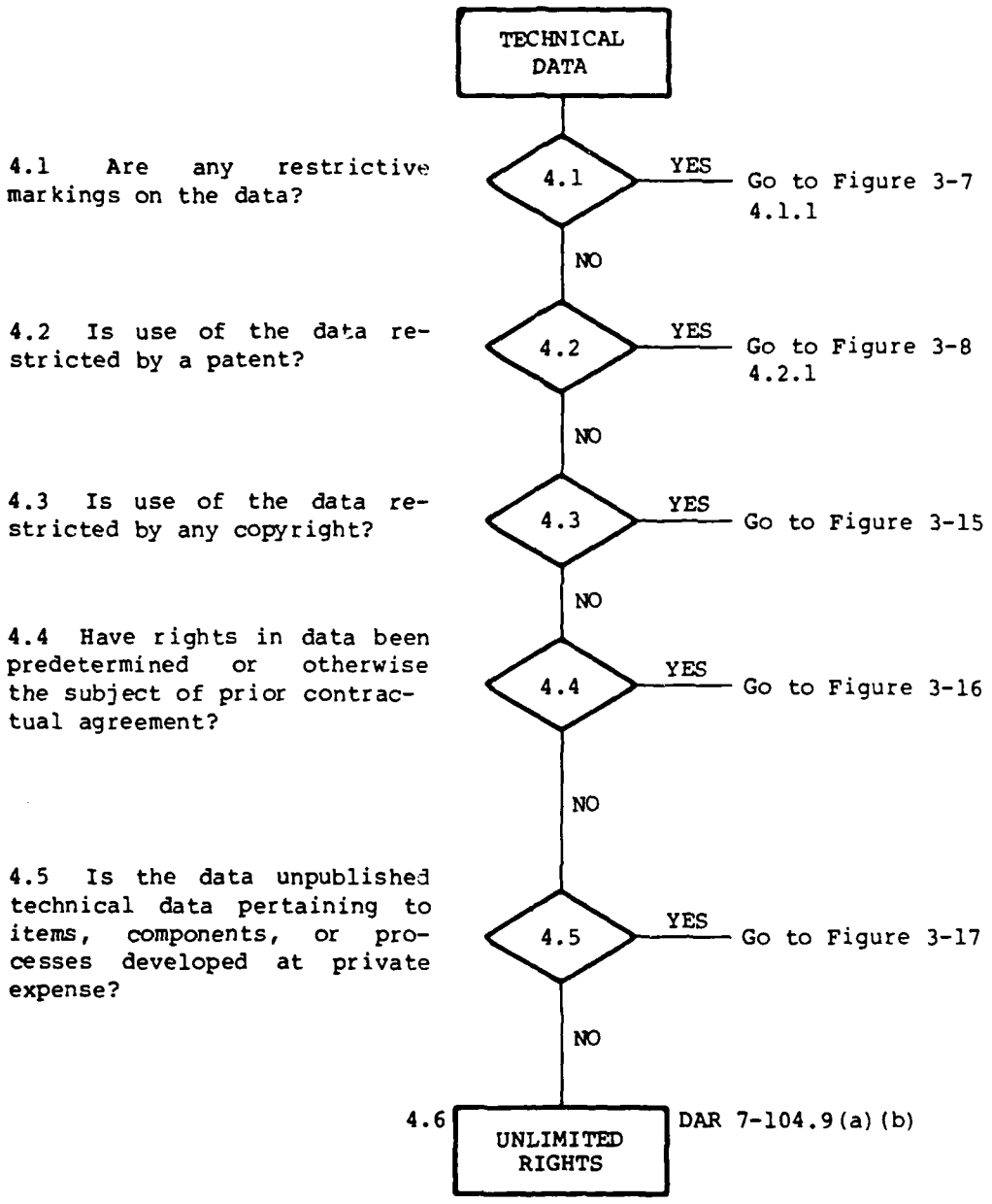
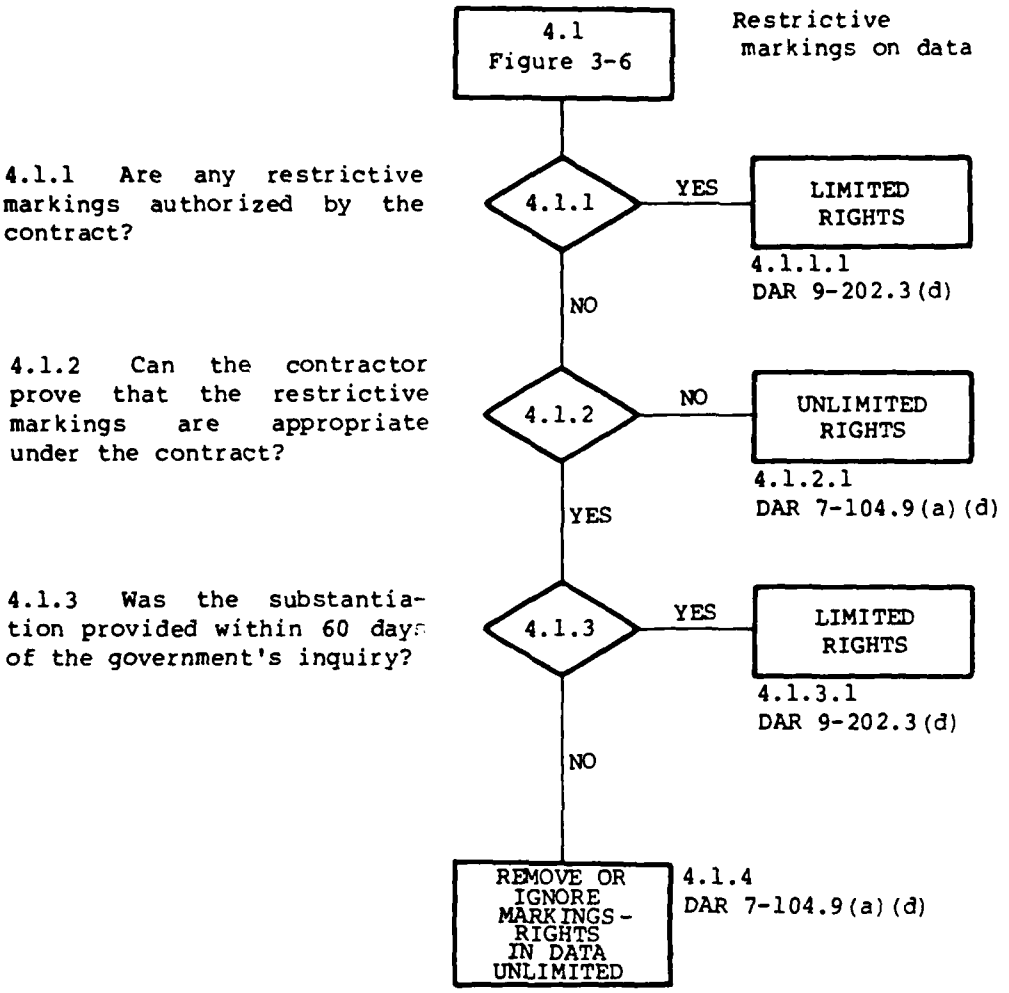


Figure 3-5. Special Taxonomy of Data Rights: Unsolicited Proposal Data.



See Dictionary for definition of Unlimited Rights.

Figure 3-6. Special Taxonomy of Data Rights: Technical Data.



NOTE: The government can remove any markings either not authorized under the contract or improper in form. Until such restrictive markings are removed, however, the government treats the data in accordance with its original markings until a determination is made by the government as to what markings are appropriate. When the contractor is entitled to some sort of restrictive markings, but supplies the data with an overly restrictive legend, the government may place a proper legend on the data after due process. In this second situation, the government only takes rights in data in accordance with the authorized restrictive markings.

Figure 3-7. Special Taxonomy of Data Rights: Restrictive Markings & Data Rights.

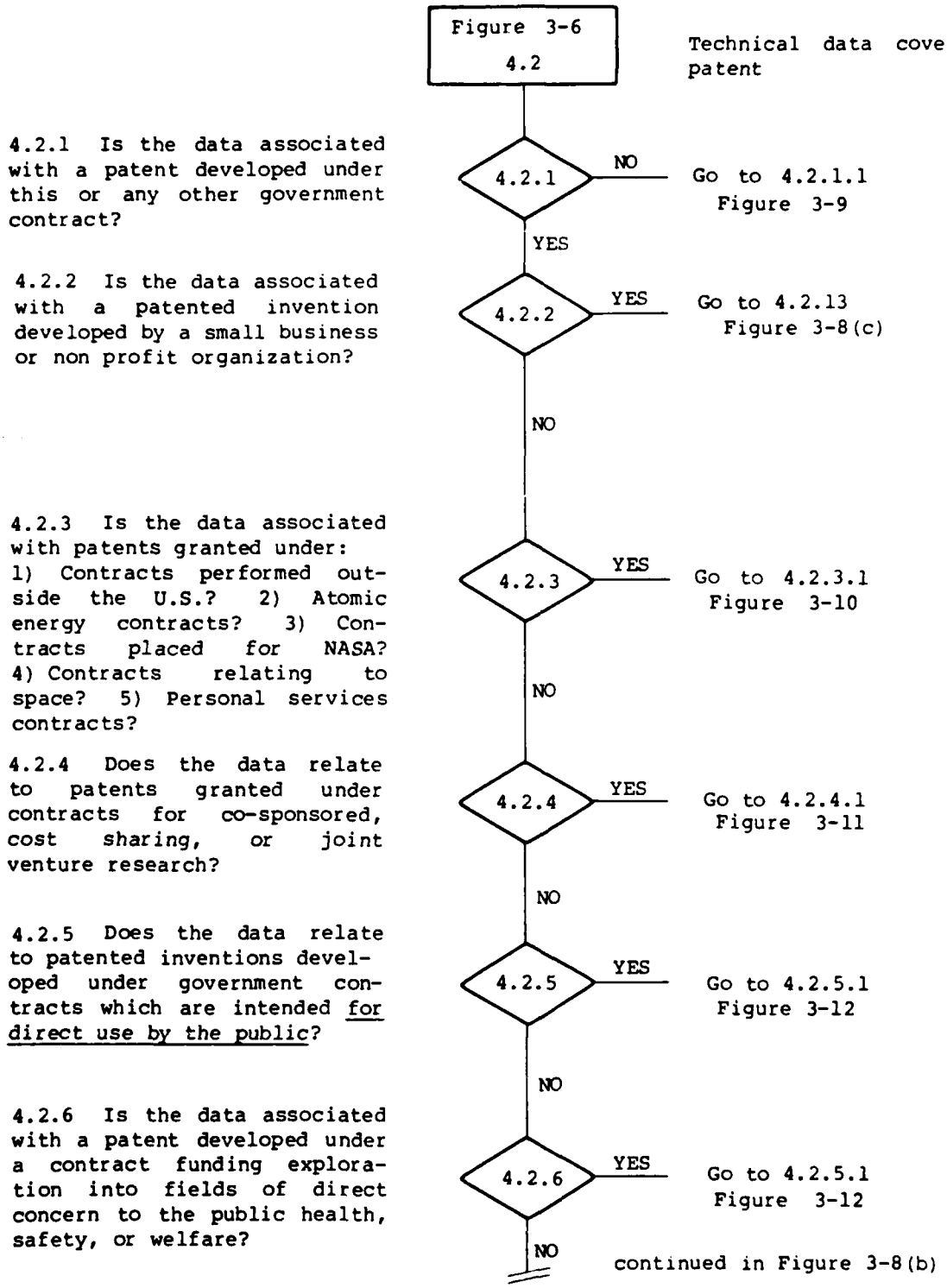


Figure 3-8(a). Special Taxonomy of Data Rights: The Relationship of Patent Rights and Data Rights.

4.2.7 Is the data related to a patent developed under a contract for research in a field where the government has been the principal developer and where title to the patent might give the contractor a dominant position?

4.2.8 Is the data associated with a government contract for the operation of a government facility or for supervision of others?

4.2.9 Is the data associated with a patent developed as a result of government funded work building upon existing knowledge to develop information, products, or processes for use by the government in a field of technology in which the contractor has acquired technical competence?

4.2.10 Has the contractor established a nongovernmental market position in an area directly related to the above field of technology?

4.2.11 Have more than 3 years elapsed since patent rights were awarded to the contractor without the patent having been practically applied?

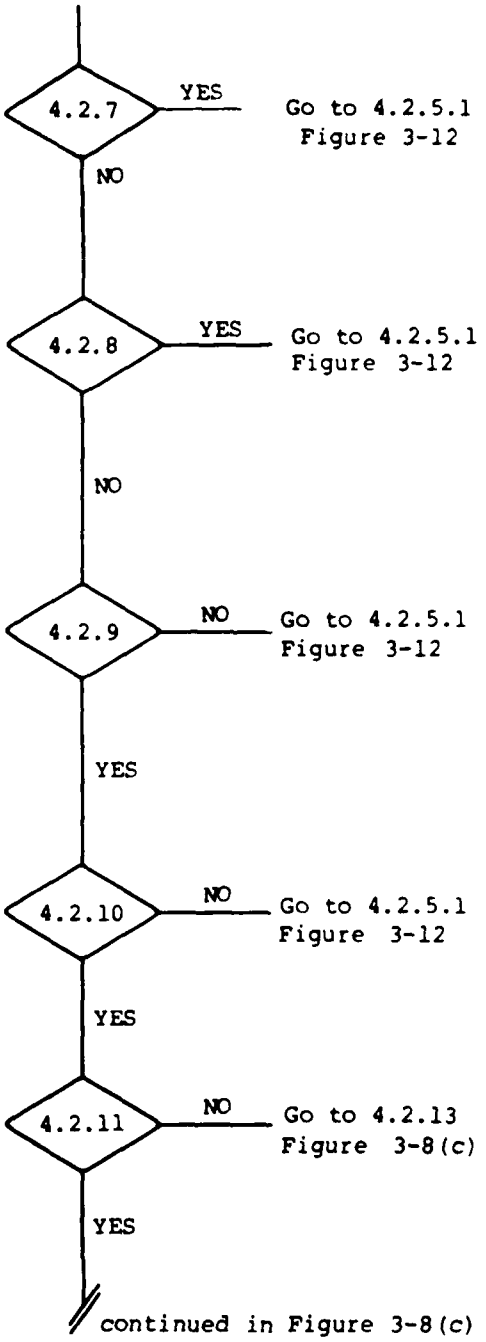
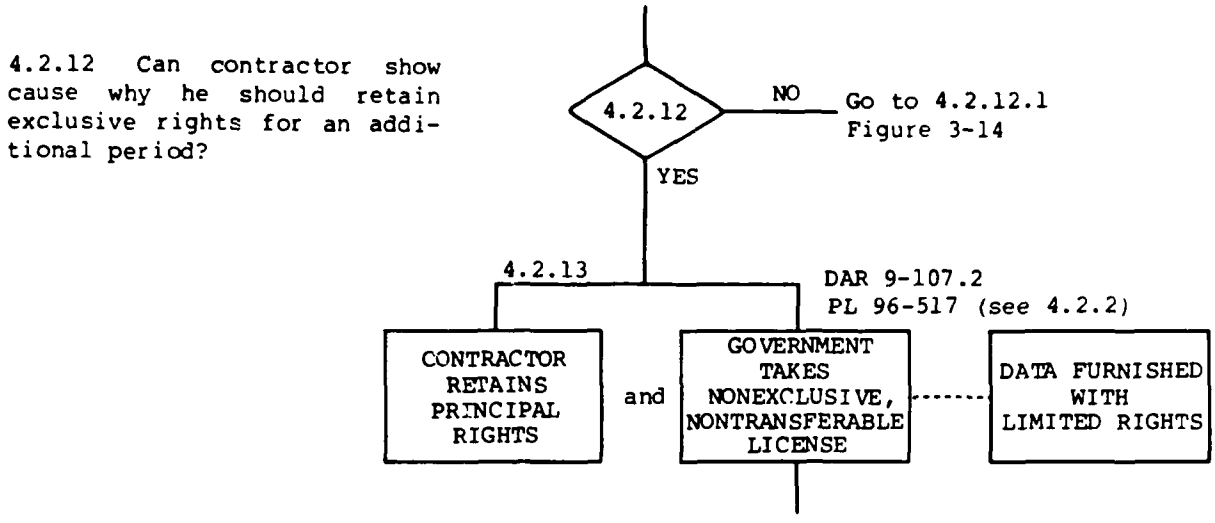


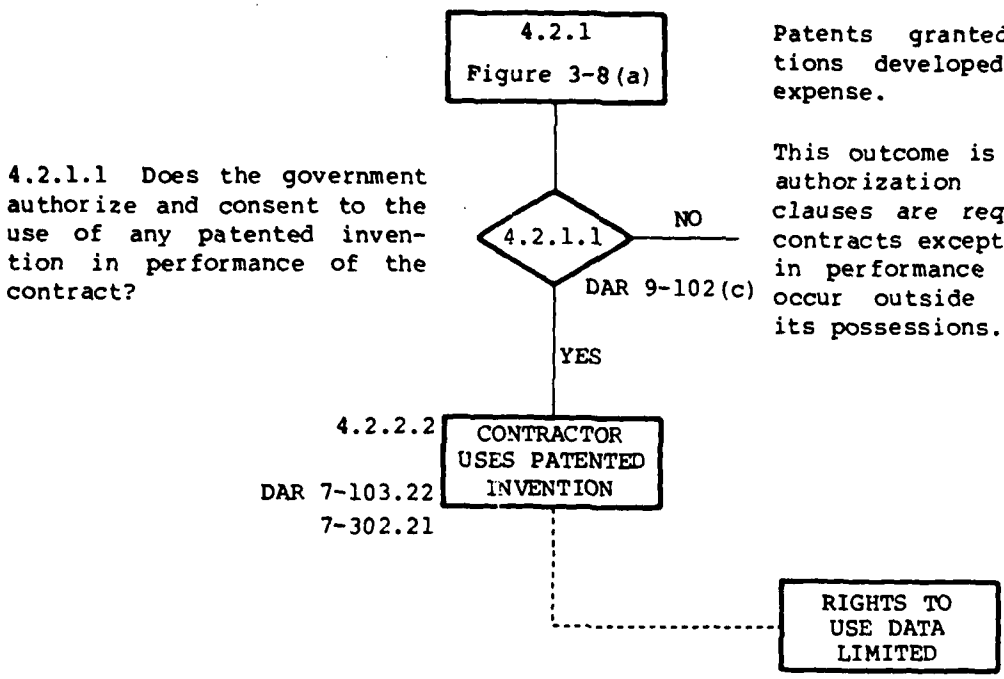
Figure 3-8(b). Special Taxonomy of Data Rights: The Relationship of Patent Rights and Data Rights.



The government has the right to make, use, and sell the invention on its behalf or to require the granting of a license on terms that are reasonable should the invention be required for public use by regulation, be necessary to fulfill health or safety needs, or for other public purposes specified in the contract. The government may furnish any data related to the patented invention in question to a contractor in accordance with the above rights. However, the contractor is not allowed to make, use, or sell the invention to or for anyone but the government. In this sense, the data is furnished to the government with limited rights.

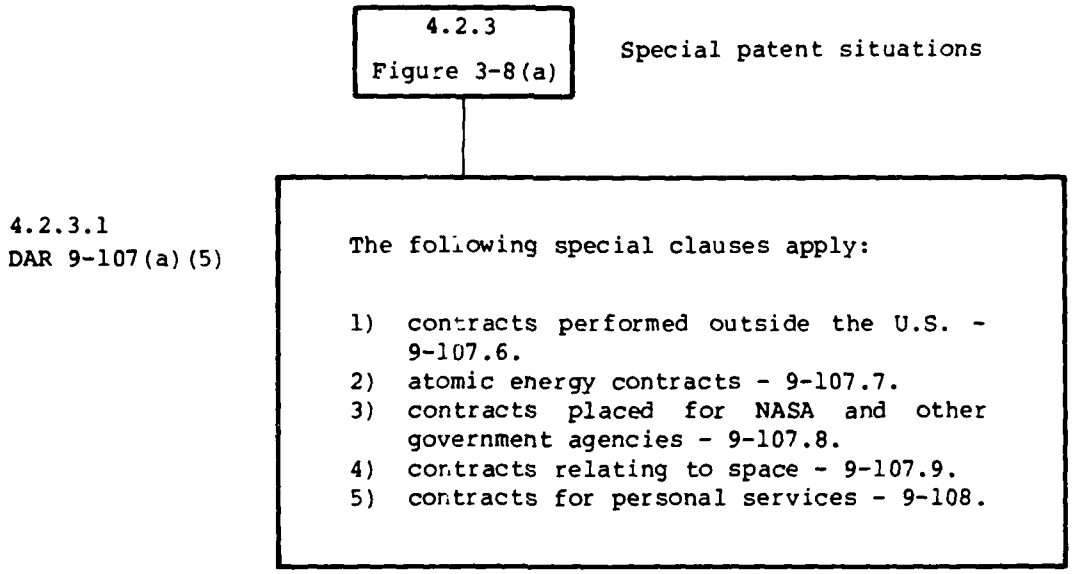
Note that patents resulting from government contracts which build upon fields of technology in which the contractor has an established market position and where the end product is to be used by the public are not covered under this path. This situation may be addressed under co-sponsored research, 4.2.3, or under exceptions to paths leading off of 4.2.4 and 4.2.5.

Figure 3-8(c). Special Taxonomy of Data Rights: The Relationship of Patent Rights and Data Rights.



The contractor uses the invention for the benefit of the government but is in no way authorized to make, sell, or use the invention for nongovernmental purposes. In this sense, the rights to use the data are limited. Note also that government authorization and consent does not mean that the owner of the patent may not be compensated for its use. He may not, however, enjoin the infringing contractor from using his invention.

Figure 3-9. Special Taxonomy of Data Rights: Patented Inventions Developed at Private Expense.



See DAR at the referenced clauses for guidance relating to patent rights (and the associated data rights) arising under the above circumstances. They are not explored in depth here since these situations are exceptions which are outside the thrust of this report.

Figure 3-10. Special Taxonomy of Data Rights: Special Contracts.

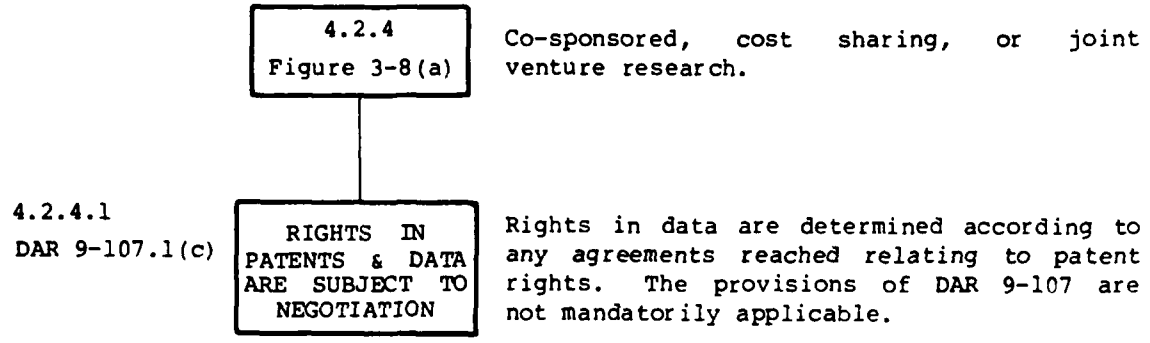
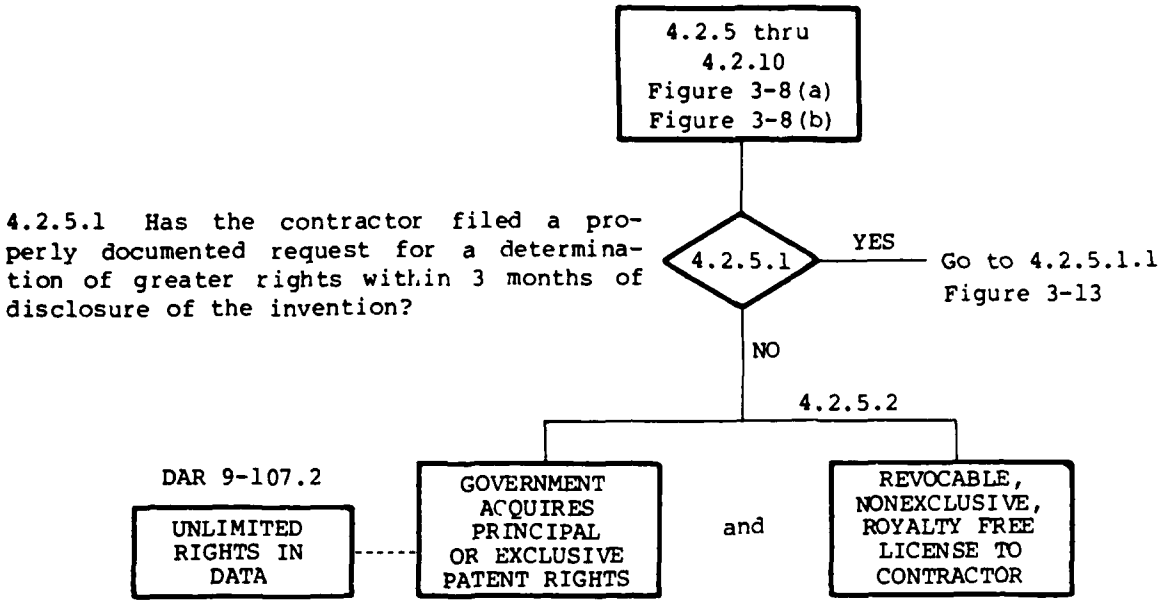
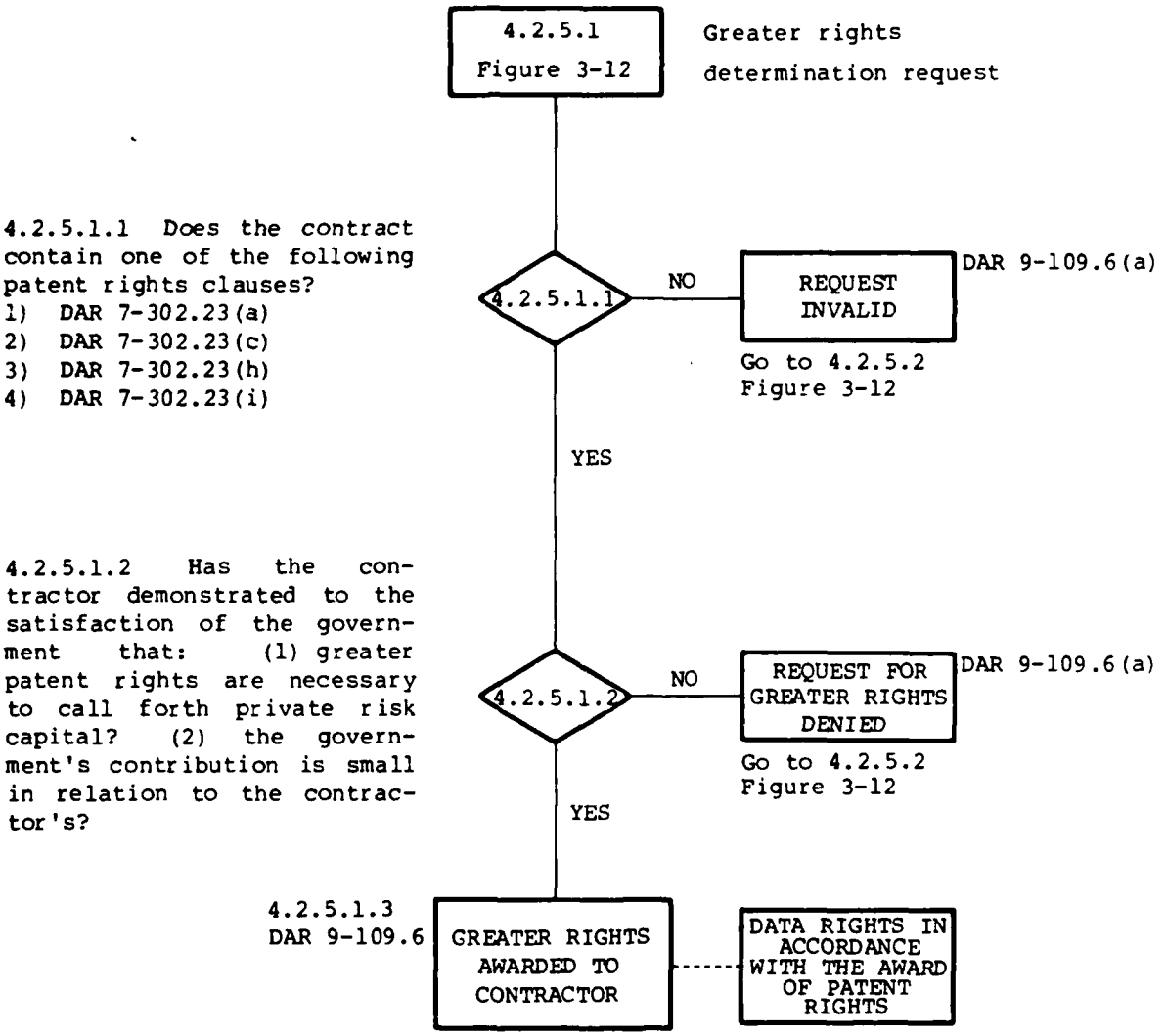


Figure 3-11. Special Taxonomy of Data Rights: Patent Rights and Co-sponsored Work.



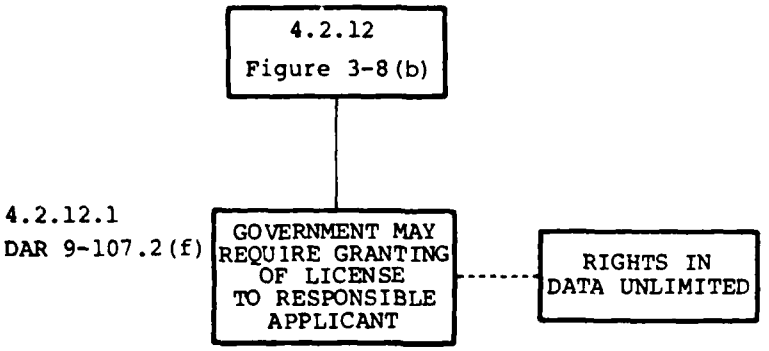
Under the above sets of circumstances, the government acquires title to any subject invention and is therefore entitled to make the invention available to anyone for any purpose. The government thus has unlimited rights in the data which describes the invention.

Figure 3-12. Special Taxonomy of Data Rights: Patented Inventions in Which the Government May Take Title.



NOTE: The amount of justification required to "satisfy the government" that greater rights are appropriate varies with (1) the field in which the patent is granted and (2) the relation of the patented invention to the purpose of the contract. Contractors must either conclusively, convincingly, or adequately establish that the criteria under 4.2.5.1.2 above apply, depending upon the interplay of (1) and (2) above. The terms underlined above are not defined in DAR (ASPR). The decision as to the award of greater rights is made by the Secretary or his designee.

Figure 3-13. Special Taxonomy of Data Rights: Awards of Greater Rights.



This provision is somewhat different from the minimum rights granted the government in that the invention need not be required for public use in order for the government to require the granting of a license. If the contractor has indeed failed to bring the invention to the point of practical application or has not made it available for licensing, he has in fact lost the principal or exclusive rights to the patent and the government may use the data previously protected by the patent in any manner it sees fit. The terms of the licenses must be fair under the circumstances, however.

Figure 3-14. Special Taxonomy of Data Rights: March-in Rights.

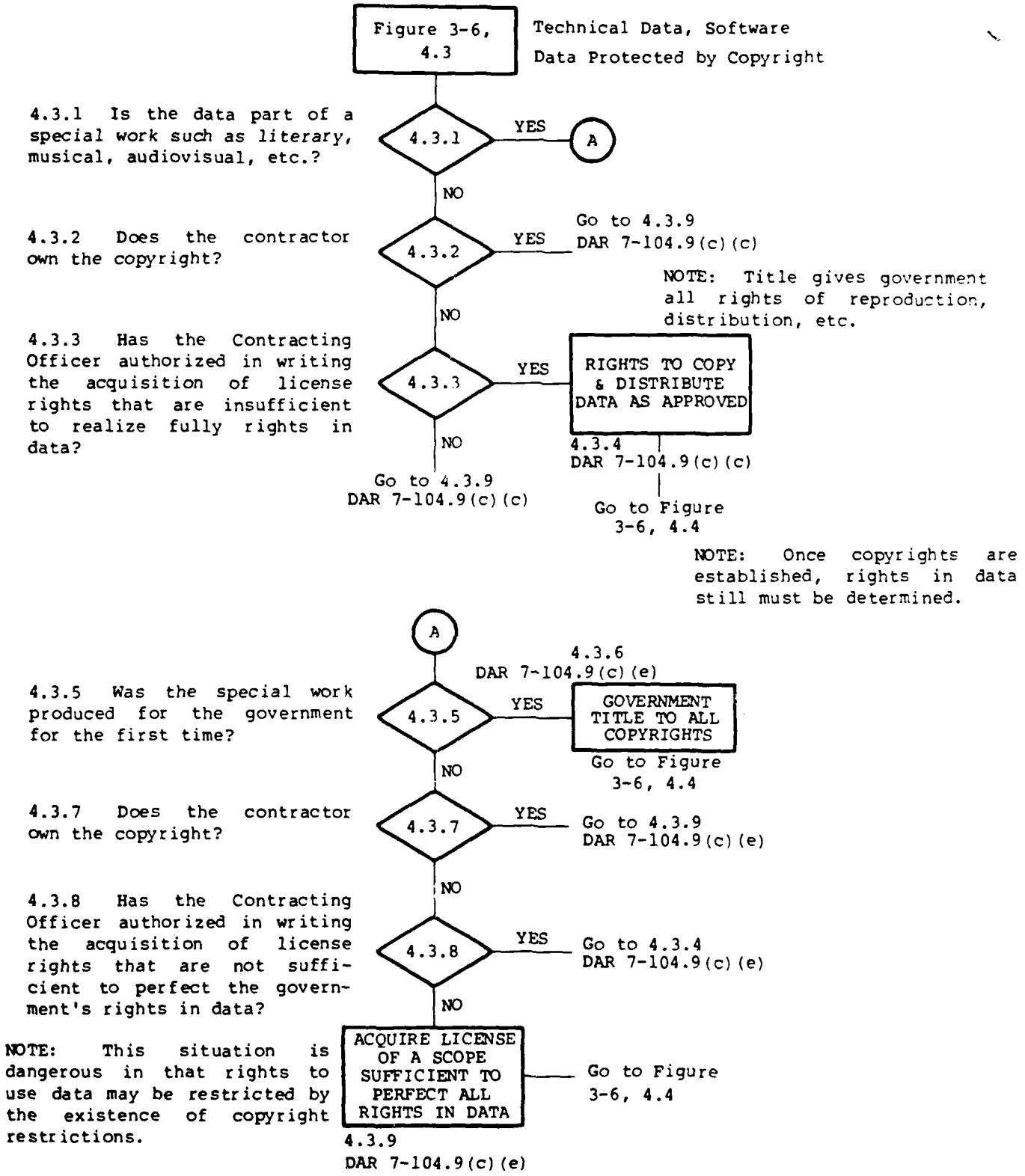
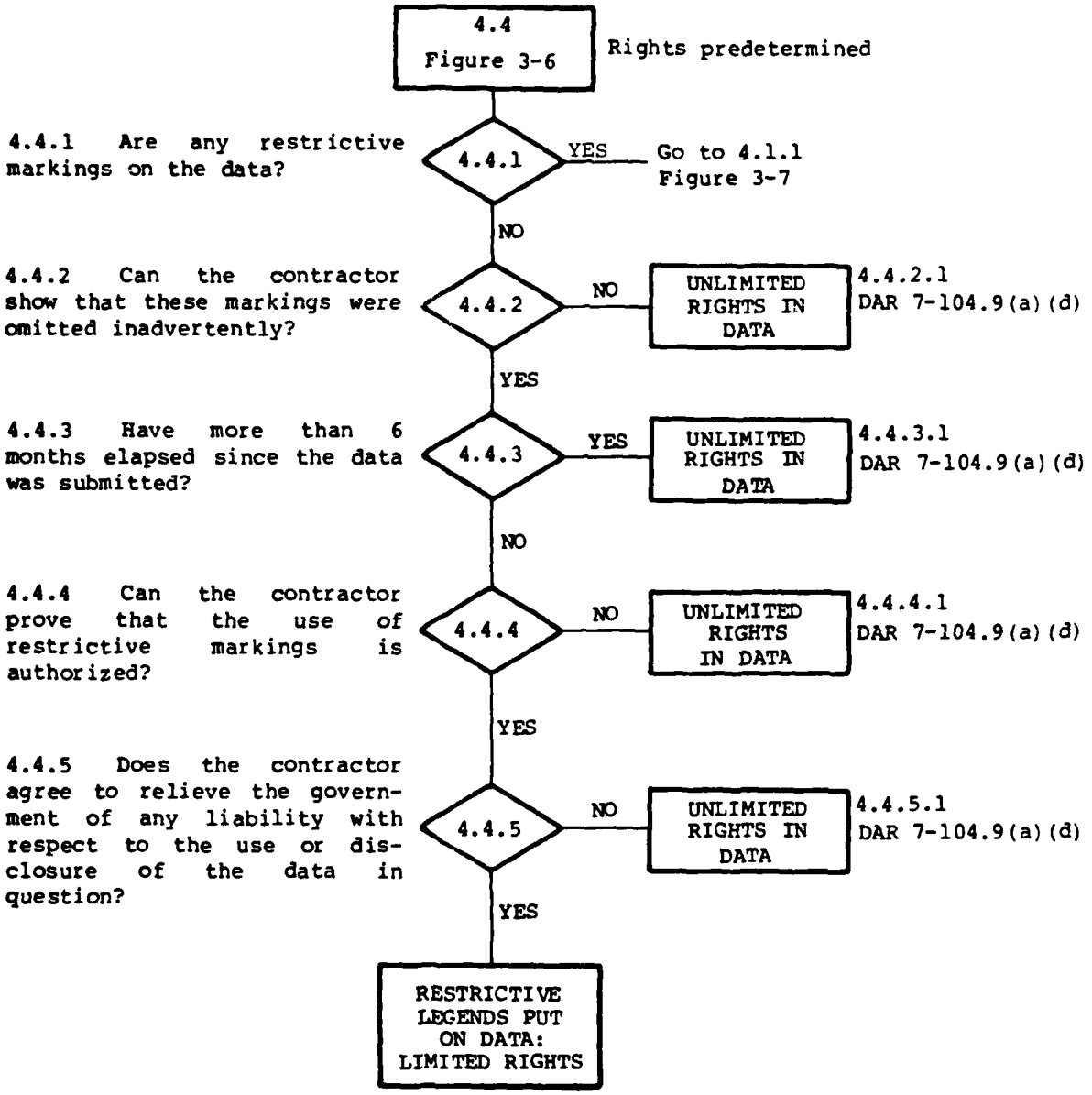


Figure 3-15. Special Taxonomy of Data Rights: The Relationship Between Data Rights and Copyrights.



NOTE: Contractor may place approved restrictive markings on the data and the government will use the data in accordance with its markings.

Figure 3-16. Special Taxonomy of Data Rights: Predetermination and Restrictive Markings.

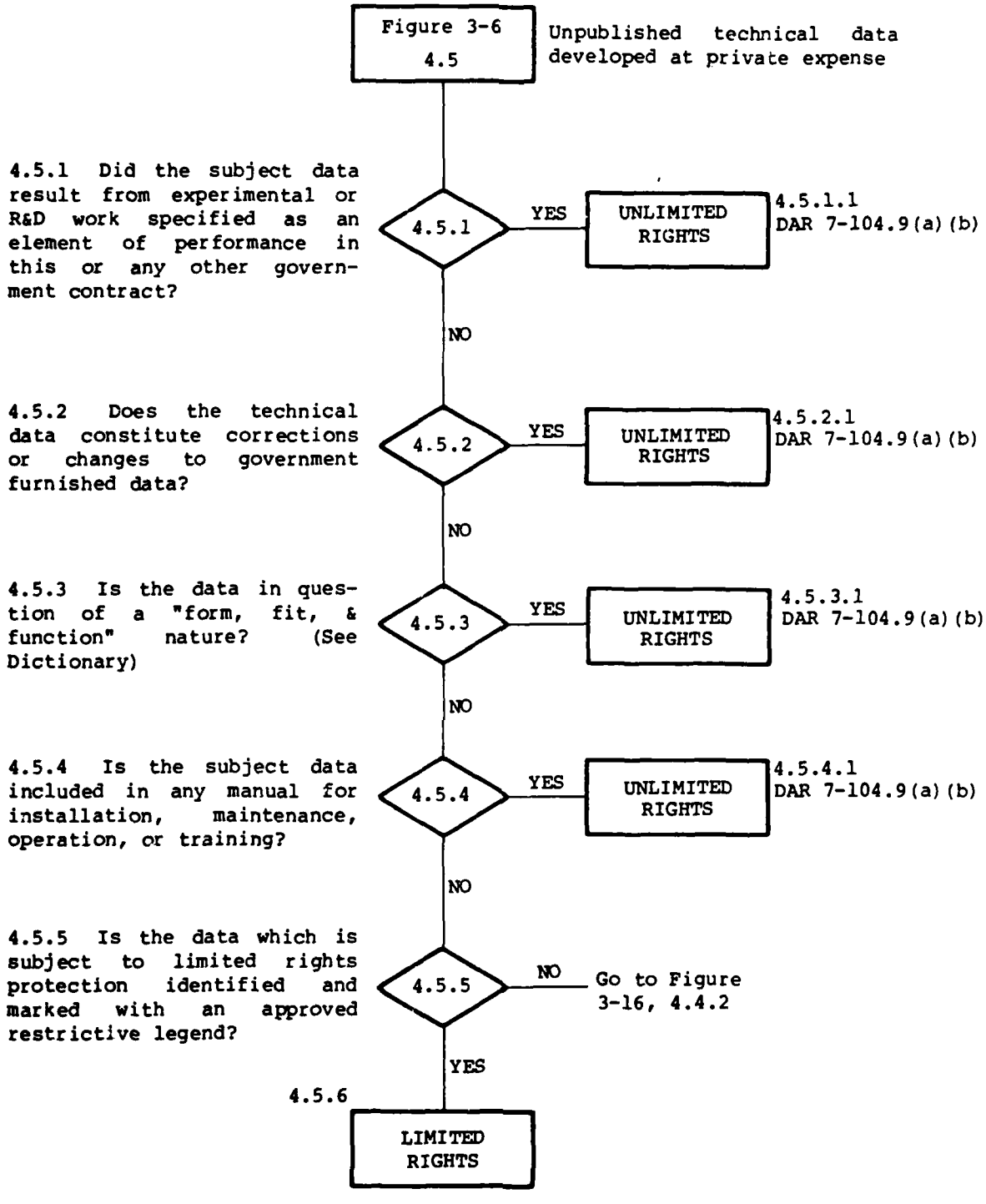
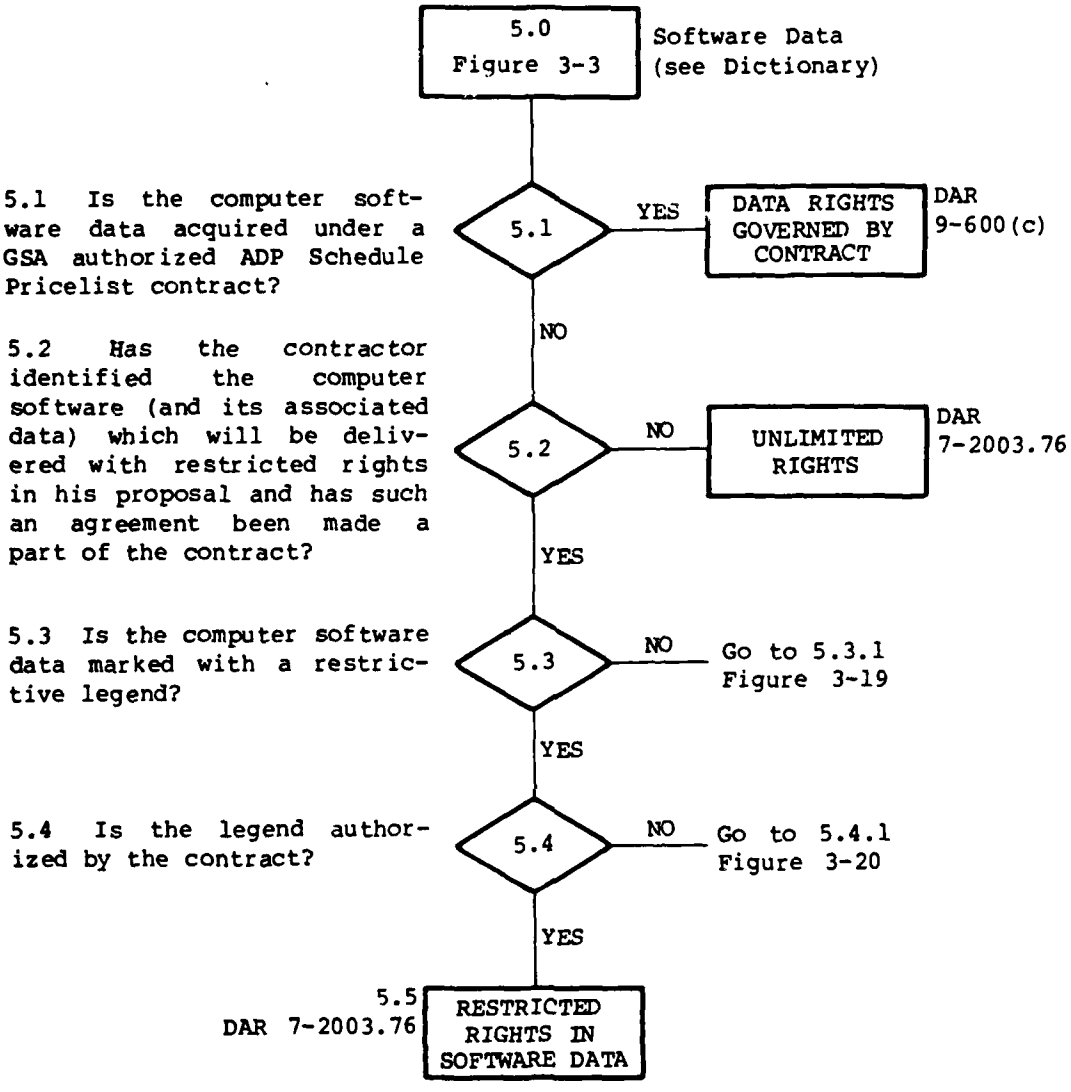
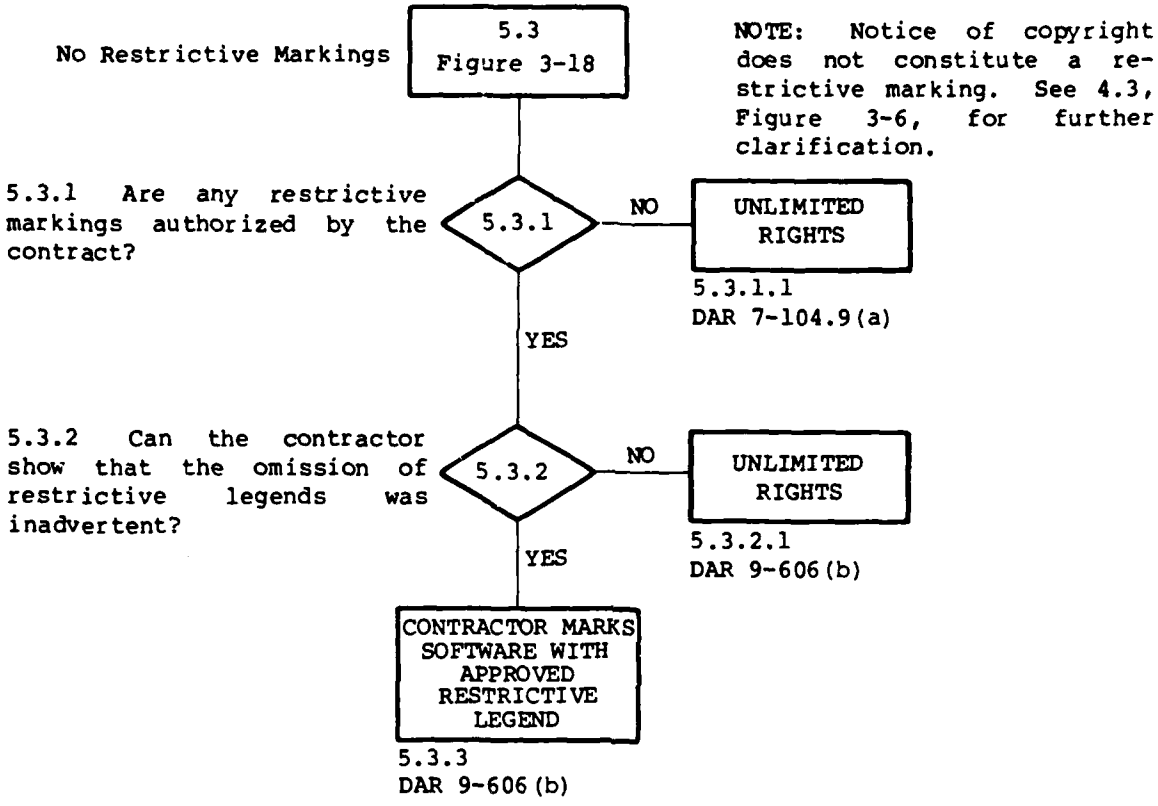


Figure 3-17. Special Taxonomy of Data Rights: **Unpublished Data Developed Privately.**



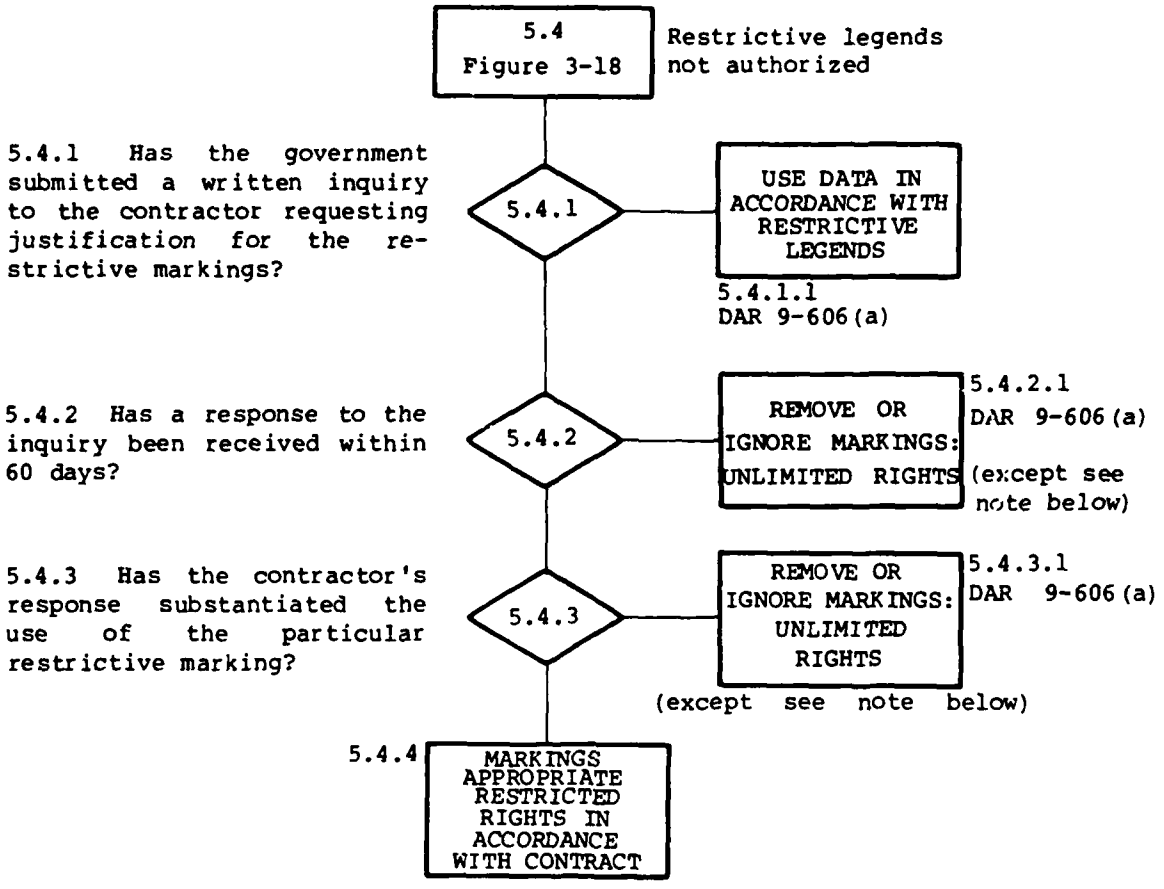
See Dictionary for the definition of the minimum rights which constitute restricted rights. Greater rights may be acquired through negotiation. If computer software developed at private expense is modifed or enhanced in fulfilling the requirements of a government contract, only that portion of the original product which is identifiable is afforded the protection of restricted rights.

Figure 3-18. Special Taxonomy of Data Rights: Software Data.



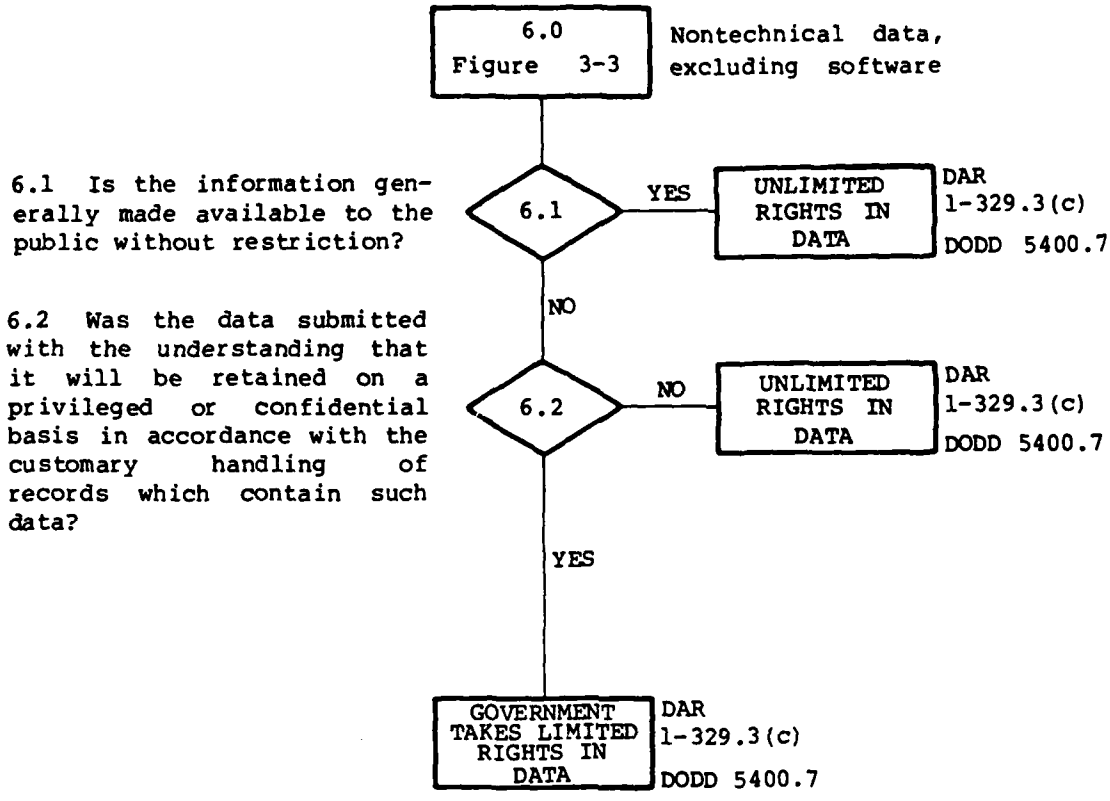
NOTE: The government will henceforth observe the restrictive legend but is released from all liability for any use, duplication, or disclosure of the computer software. See 5.5, Figure 3-24, for more on restricted rights.

Figure 3-19. Special Taxonomy of Data Rights: Markings on Software Data



See 5.5, Figure 3-24, for further clarification of restricted rights. Until the 60 days expire, or the contractor responds, the government must use the data in accordance with its markings. Besides being unauthorized, restrictive legends may also be in a form not specified by the contract. If a restrictive marking is authorized, the government may only remove the overly restrictive legend and replace it with a proper one. In this case, the data is still taken with restrictive rights. Contractors must be notified in writing when restrictive markings are altered.

Figure 3-20. Special Taxonomy of Data Rights: Overly Restrictive Markings on Software.



Such data is protected only under the provisions of the Freedom of Information Act. There is no section in DAR (ASPR) which spells out the rights in this type of data to the degree that rights in technical and/or software are addressed. There exists some potential for confusion in that 6.2 requires the existence of an "understanding" and the existence of "customary procedures." The potential for misunderstanding here is great.

Figure 3-21. Special Taxonomy of Data Rights: Financial & Administrative/Management Data.

4. DATA AND DATA RIGHTS OBJECTIVES, POLICIES, AND PROCEDURES

The objectives, policies, and procedures supportive of the data and data rights program within the Department of Defense are on one hand simple and straightforward and on the other, complex and subject to internal organizational differences of opinion. There exist, in Department of Defense Instruction (DODI) 5010.12 of December 5, 1968, the formal policies concerning the management of technical data. The objective of the Department of Defense (DoD) data policy as stated in DODI 5010.12 is:

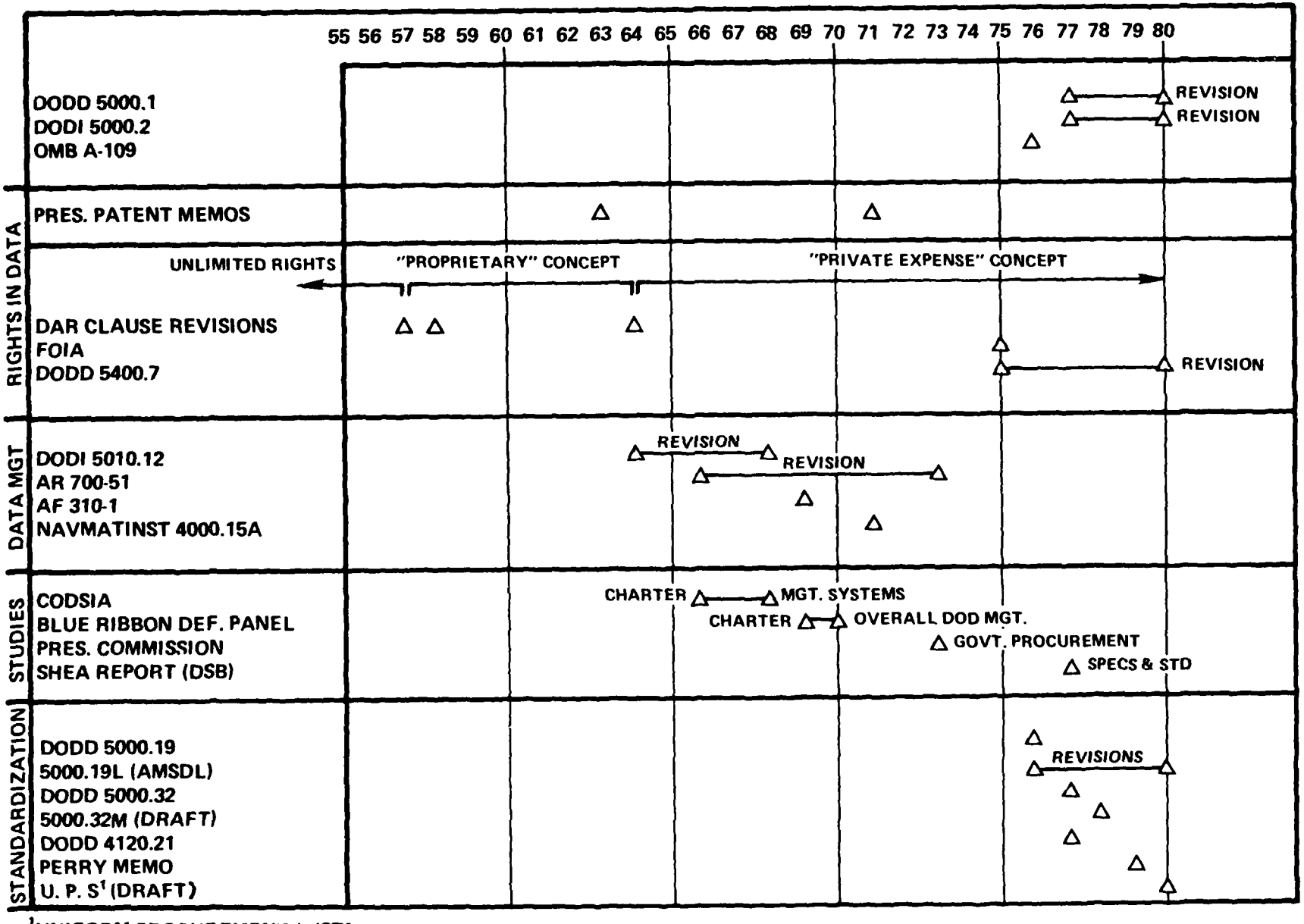
> ". . . to assure optimum effectiveness and economy in the support of systems and equipment within the Defense establishment."

In order to accomplish this objective, data requirements must be determined, data acquired, and ultimately utilized. DODI 5010.12 lists ten actions, from planning data requirements concurrently with system planning to stressing uniformity in the data requirements themselves, which serve to achieve this goal. The balance of the instruction deals with policy and procedures, responsibilities, data selection criteria, and the mechanics of completing certain data related forms. This twelve (12) year old instruction is still effective and represents the official Department of Defense policy on the management of technical data.

4.1 History of Data Rights Policy. In addressing the history of data and data rights policy in the Department of Defense, it is important to remember that the basic policy has undergone little change, but the implementation of this policy has been subjected to various interpretations. It is often easy to view a subject such as data and data rights as a narrow field that may be analyzed strictly within the context of the larger system, in this case the acquisition process. The emergence of the space program with subsequent high technology computer systems from the technical side, and the Viet Nam conflict

Figure 4-1

HISTORICAL MILESTONES IN THE DEVELOPMENT OF DOD
DATA MANAGEMENT AND DATA RIGHTS POLICY



[1]UNIFORM PROCUREMENT STI

with associated procurements from the system use side contributed to three distinct phases in the data and data rights arena.

4.1.1 Rights in Technical Data. From 1957, the beginning of the space programs, to 1964, the primary policy of the Department of Defense was to take virtually unlimited rights in all technical data received. On the contractor side, however, the contractor was permitted by the 1958 ASPR Clause 9-203.4 to withhold data considered as proprietary. This unilateral withholding of information resulted in technical data being received with major omissions. The basis for such omissions was the 1958 revision of section (h) of ASPR 9-203.4, which for R&D contracts stated:

> "(h) Data need not be furnished for standard commercial items or services which are normally or have been sold or offered to the public commerically by any supplier and which are incorporated as component parts in or to be used with the product or process being developed if in lieu thereof identification of source and characteristics (including performance specifications, when necessary) sufficient to enable the Government to procure the part or an adequate substitute are furnished; and further, proprietary data need not be furnished for other items which were developed at private expense and previously sold or offered for sale, including minor modifications thereof, which are incorporated as component part in or to be used with the product or process being developed if in lieu thereof the Contractor shall identify such other items and that "proprietary data" pertaining thereto which is necessary to enable reproduction or manufacture of the item or performance of the process. For the purpose of this clause "proprietary data" means data providing information concerning the details of a contractor's secrets of manufacture, such as may be contained in but not limited to its manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself and to the extent that the contractor has protected such information from unrestricted use by others."

This clause was the basis of the period that has been referred to as the "proprietary" period in the acquisition of data rights. When data was

delivered with the so-called "holes" that resulted from the withholding of contractor declared proprietary (or trade secret) data, the burden of proof was on the government to show that the missing data was in fact not proprietary. During the period from 1958 to 1964 there were numerous attempts to make headway into solving the problem of rights in technical data. In 1960 a congressional subcommittee conducted hearings on proprietary rights and data. These hearings were conducted before a subcommittee of the House Select Committee on Small Business and further reflected the problems being experienced by both government and business. 1/ Additional discussions of the early Department of Defense data rights policy can be found in portions of the Government Contracts Monograph No. 10, compiled by the George Washington University. 2/

In early 1964 there were two actions that began the change from the proprietary concept of data rights to the public/private expense concept. First, Defense Procurement Circular No. 6 sets forth a new data policy, and second, the first issue of DoD Instruction 5010.12 concerning the management of technical data. This instruction was the first of three versions (1964, 1965, 1968), the latest (1968) of which is still effective and forms the basis for technical data management within the Department of Defense.

The concept of LIMITED and UNLIMITED rights in technical data was promulgated in the February 1965 "Rights in Technical Data Clause." In the case of UNLIMITED rights there is virtually no restriction placed on the use of data obtained under the provision. In the case of LIMITED rights, Paragraph (a)(2) of the "Rights in Technical Data (Feb. 1965)" ASPR clause defines limited rights as follows:

> "Limited Rights means rights to use, duplicate and disclose technical data in whole or in part, by or for the Government with the express limitation that such data may not be released outside the Government, used, duplicated or disclosed in whole or in part, for manufacture or procurement except for: (1) emergency repair or overhaul work by or for the Government where the item or process concerned is not otherwise reasonably available to enable timely performance of the work; and (2) release to a foreign government as

the interests of the United States may require; provided, in either case, that the release of such data shall be subject to the limitations of this paragraph."

4.1.2 Rights in Software Data. The current basic DAR(ASPR) clause dealing with rights in technical data is dated March 1979, and has been expanded to include computer software. DAR (ASPR) defines software data in a manner that is unique to DoD. Whereas other acquisition regulations include software documentation within the definition of software data, DAR (ASPR) excludes it, choosing instead to address rights in software documentation data under technical data. Thus, insofar as DAR (ASPR) is concerned, software data is restricted to recorded information, either in the form of computer programs or computer data bases, in a format capable of being read by a machine. In addition, the government's rights in software data are different than those associated with technical data. Whereas technical data are taken with limited or unlimited rights, software data are acquired with either restricted rights or unlimited rights. Thus, restricted rights apply only to software data and include, as a minimum (according to the DAR (ASPR) definition of restricted rights, 9-601(j)), the right to:

(1) use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(2) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(3) copy computer programs for safekeeping (archives) or backup purposes; and

(4) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

Additional flexibility is available to the program office in that other specific rights may be made part of the contract so long as they do not dilute the government's minimum rights.

As with technical data, the determination of rights in software is based upon the notion of who paid for its development. Computer software developed at private expense is acquired with restricted rights, unless the contract provides otherwise. When software is acquired with restricted rights, the associated software documentation is acquired with limited rights and can not be used for preparing the same or similar software. According to DAR(ASPR) 9-602, the government takes unlimited rights in:

1) computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

2) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

3) computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government, (ii) information in which the Government has unlimited rights, or (iii) information which is in the public domain;

4) computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

5) computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

Most owners of software have sought to protect their rights as a trade secret in the same way that technical data not covered by a patent can be protected if it is not made available to the public without restriction and if precautions are taken to ensure its confidentiality. With regard to attendant software documentation, the contractor may seek to protect it under the provisions of trade secrecy (like the software itself) or as a copyrighted work. Some owners of software seek to protect their programs and data bases under both trade secrecy and copyright provisions. For example, the computer software and software documentation may be affixed with both a copyright notification and a legend which restricts disclosure of the data (the restrictions then normally enumerated in the contract). DAR (ASPR) further muddies the situation by drawing a distinction between computer software and

computer software documentation that is not found in the procurement regulations of other government agencies which acquire software, nor in the final draft of the Federal Acquisition Regulation (FAR). Computer software documentation is acquired under the provisions of rights in technical data (limited/unlimited) because DAR (ASPR) includes it within the definition of technical data. Computer programs and computer data bases (i.e., computer software) are acquired under somewhat different provisions with either restricted or unlimited rights. The differentiation between software and software documentation, in conjunction with the fact that DAR (ASPR) does not consider a copyright notice to be a restricive marking, may lead contractors to believe it is necessary as well as possible to doubly protect their software and its documentation. For example, while it is not yet established conclusively whether or not computer software is copyrightable, even though the Copyright Office does register it, there is no question that software documentation is. However, if the owner of the software documentation elects to affix a copyright label which, among other things, must include the date of first publication, then to claim further protection under the common law of trade secrecy creates a logical dilemma since the publication of the documentation renders the software and its documentation no longer a secret. In many cases, however, the contractor may claim that the software and its documentation is submitted as an unpublished, as opposed to a published, work. If the copyright notice is still affixed, this creates another logical inconsistency since the copyright notice must include the date of first publication; clearly an unpublished work cannot have a date of first publication.

The law with respect to the patentability of software is still inconclusive. Whereas the Copyright Office has registered computer programs since 1964, the Patent Office has steadfastly denied patent applications on software. However, the Court of Customs and Patent Appeals has been more receptive in granting such patents. Thus, patent protection may indeed be available for innovative computer processes and may be very well suited to the protection of computer programs in the form of firmware. Therefore, as with innovative items, components, and processs of manufacture, computer software developed under a government contract may also be the subject of a patent application. Though pertinent, the acquisition of rights in patents is not

discussed at this point, but rather in Section 4.1.4. The important thing to remember is that through the Authorization and Consent clauses contained in the contract and under *28 USC 1498*, the owner of a patent covering software cannot enjoin performance of a government contract utilizing that software because of a claim of patent infringement.

4.1.3 Rights in Financial and Administrative/Management Data. Section 9 of DAR and the basic Rights in Data and Computer Software clause (7-104.9(a)) excludes financial data and administrative/management data from their provisions. However, like technical data, the disclosure of financial data and/or administrative/management data may cause serious competitive harm to the contractor. DAR (ASPR) itself does not specifically enumerate the rights and responsibilities acquired by the government with respect to the disclosure of financial or administrative/management data acquired under contract. Instead, the protection afforded to this data is found in the provisions of the Freedom of Information Act. DODD 5400.7 (24 March 1980) establishes the policies and procedures relating to the DoD Freedom of Information Act (FOIA) Program. However, DAR (ASPR) 3-507.1 does discuss rights which attach to financial and administrative/management data contained in proposals (see Section 5.3.6).

DODD 5400.7 goes on to state:

> "Records within the exemption must contain trade secrets or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate Government interest. Examples include records which contain:
>
> a. Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions and discoveries, or other proprietary data.
>
> b. Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

c. Personal statements given in the course of inspections, investigations, or audits, where such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets of commercial or financial information normally considered confidential or privileged.

d. Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to prevailing rate employees within the Department of Defense."

It should be noted, however, that unclassified financial and administrative/management data (and perhaps even technical data, for that matter) which does indeed come under Exemption 4 of the Freedom of Information Act may still be released to the public if the proper authorities determine that such a release will not cause substantial harm to the competitive position of the source, will not impair the ability of the government to acquire such information in he future, or will not impair any other legitimate government purpose.

One of the reasons that contractors are reluctant to submit limited rights technical data to the government is that the provisions of the Freedom of Information Act (FOIA) may make possible, or indeed may even require, the release of such data, if unclassified. The circumstances under which such data may be released are the same as those presented above dealing with the FOIA and business sensitive nontechnical data. The key requirement of the law is to make "records" available to the public. Though DAR(ASPR) and DODD 5400.7 exclude technical data from the definition of the term "record", some contractors do not believe this exclusion would hold up in court if it were tested. These contractors can envision a scenario in which the disclosure of technical data that DoD has accepted with a limited rights legend could be required.

4.1.4 Rights in Patents. Until December of 1980, DAR(ASPR) regulations with respect to rights in patents developed under government contracts interpreted and implemented presidential policy memoranda, initially that of President Kennedy in 1963 and subsequently that of President Nixon in 1971 (which made minor revisions to President Kennedy's executive order). Rather

than enact any truly consistent legislation, Congress spoke its mind on patent rights to be acquired by the government in piecemeal fashion. The presidential memoranda, DAR (ASPR), and congressional legislation all promoted a policy whereby the government took either title to the patented invention or acquired a paid up nonexclusive license. For example, DAR (ASPR) provided that the government took title to all patented inventions developed with government assistance unless:

1) the work called for by the contract was in a field of technology in which the contractor has acquired technical expertise.

2) the purpose of the contract is to develop information, products, processes, or methods for use by the government.

3) the contractor has an established nongovernmental commercial position in the field of technology in question.

In cases where any combination of the following circumstances apply; i.e., when a patented invention is developed under a contract where:

1) a principal purpose of the contract is to create, develop, or improve products, processes, or methods which are intended for commercial use (or which are otherwise intended to be made available for use) by the general public at home or abroad, or which will be required for such use by governmental regulations; or

2) a principal purpose of the contract is for exploration into fields which directly concern the public health, public safety, or public welfare; or

3) the contract is in a field of science or technology in which there has been little significant experience outside of work funded by the Government, or where the Government has been the principal developer of the field, and the retention of exclusive rights at the time of contracting might confer on the contractor a preferred or dominant position; or

4) the services of the contractor are:
   a) for the operation of a Government-owned research or production facility; or
   b) for coordinating and directing the work of others,

the government's policy is to take title to the patented invention (DAR(ASPR) 9-107.2) except in the case where exceptional circumstances exist; e.g., where the public's interest is best served by awarding title to the contractor. One

of the primary public interests is the commercial appplication of useful inventions. To this end, the government may indeed award title to the contractor if such title is necessary to encourage the investment which is required to bring the invention to the point of practical application.

In recognition of the public interest in commercialization of useful inventions, the policy of the government with respect to rights in patents granted for inventions made with federal assistance changed rather dramatically in December 1980. One of the important objectives of the government has been to promote the utilization, commercialization, and public availability of inventions arising from government contracts. Though the notion that the public should own what it has paid to develop is sound conceptually, in practical terms the government's policy of taking title to inventions made during the course of a government contract has not served to further commercial application of useful technology. As a result, Congress passed and President Carter signed into law Public Law 96-517 in December 1980. Under the provisions of this law, small business firms and nonprofit organizations may elect to retain title to any patented inventions resulting from government funded work unless:

1) the contract is for the operation of a Government-owned research or production facility,

2) exceptional circumstances exist where the public interest is best served and the objectives of Public Law 96-517 are best realized through a government retention of title, or

3) the proper authority determines that government title to the invention is necessary to protect security activities.

Under the new law, the government still acquires a paid up, irrevocable license to practice or to have the patented invention practiced and to file patent applications in countries in which the contractor has not applied for a patent. In addition, the contractor must make his election within a reasonable amount of time after disclosure of the invention to the government. If the small business or nonprofit concern does elect to retain title, the government may require periodic reports on the utilization of the patented invention, just as in the current DAR (ASPR) provisions. The government also retains the right to require the granting of licenses to responsible

applicants if the contractor who elects to retain title does not satisfactorily bring the patented invention to commercial application or otherwise fails to satisfy the responsibilities under which title was granted. Included in the Act is provision which states that the Act takes precedence over all the provisions of previously passed legislation which, in a piecemeal fashion, governed the disposition of patent rights in inventions made by small business firms and nonprofit concerns under government contract.

4.1.5 Contract Disputes Involving Rights in Data. In reviewing the 93 decisions of the Comptroller General dealing with data and data rights, 95% (88 of 93) were decided in favor of the Government. Discussions with individuals engaged in contract law confirmed that there is virtually no support of contractor protests in the field of data rights.

Though many appeals were denied based on untimely protest, most decisions went beyond this finding and reaffirmed the appropriate DAR (ASPR) regulation in favor of the government. Some areas reaffirmed will be discussed in the following paragraphs.

For example, all unsolicited proposals should be treated as though they contain legally protectable trade secrets. A decision of the Comptroller General of the U.S. (DCGUS) number B-143711, Dec. 22, 1960, is an example of the improper use of proprietary data in a solicitation that resulted in cancellation of an invitation for bids. A quote from DCGUS number B-192414, October 17, 1978, states, "Proprietary contents of an unsolicited offer for R&D effort may not be used as a basis for solicitation or negotiations with other firms unless the unsolicited offeror consents."

Two important issues regarding possible delay of a procurement were brought out in DCGUS B-191466, November 8, 1978. These are quoted here: "The fact that litigation is pending between two nongovernmental litigants afforts no basis for protest." In addition, "Regarding rights to proprietary information, we have stated that we are not in a position to adjudicate a dispute between private parties concerning their respective rights in data and until those rights are established in a proper forum we will not disturb an ongoing procurement."

There are also cases wherein disputes regarding data rights were not of primary importance but where resulting decisions were of significant interest. For example, DCGUS B-189361, March 31, 1978, states that the payment of royalties is not the same as buying the data rights. Numerous decisions also upheld the position that proprietary data that is not marked (or is not reported within six months of delivery as limited rights data inadvertently unmarked) conveys unlimited rights to the government. Reverse engineering is permitted according to DCGUS B-177115, May 14, 1978.

The Armed Services Board of Contract Appeals were basically appeals of decisions by contracting officers. Samples of findings not clearly addressed by DAR(ASPR) or covered by the DCGUS follow. For example, the protest of a patent infringement must be by the patent holder. Additionally, where the government already has rights, the government does not have to pay for rights again. Also, patent notices may be denied on drawings where the government has unlimited rights (see ASBCA #16516, October 29, 1975).

Some other interesting situations arise that resulted in protests. Even though several protests raised the possibility of patent infringement as a basis to deny a proposal, GAO will not accept this. There is good reason, for it is expected that the proposer will make just royalty payments or will indemnify the government, or otherwise handle the situation responsibly. Also, only the Contracting Office's technical people can decide the competence of a bidder, not the GAO.

Only one reference to the Freedom of Information Act was found. According to DCGUS # B-191346, March 20, 1979, which cites Fairness of GAO Bid Protest Procedures 4CFR part 20, 1978, there is no remedy for an unsuccessful FOI Act request to an agency.

A few simple themes recurred. There is a royalty free use of a patent to the government if the process is not reduced to practice prior to performance of a government contract. Without an order for deferred data, even though delivered, the government will not be required to pay for it. According to ASBCA # 14147, October 23, 1970, proprietary data ordered or requested by the government that is not covered by a contract must be paid for separately.

The question of who paid for the data has become a major test of whether data is proprietary. This conclusion based on decisions like the following from 22 COMP Gen 312, 315 (1972) or DCGUS B-191007, June 13, 1978.

> " 'Where there is a mix of private and government funds, the developed item cannot be said to have been developed at private expense. The rights will not be allocated on an investment percentage basis. The government will get 100 percent unlimited rights, except for individual components which were developed completely at private expense. Thus, if a firm has partially developed an item, it must decide whether it wants to sell all the rights to the government in return for government funds for completion or whether it wants to complete the item at its own expense and protect its proprietary data. On the other hand, if the government finances merely an improvement to a privately developed item, the government would get unlimited rights in the improvement or modification but only limited rights in the basic item. Hinricks, Proprietary Data and Trade Secrets under Department of Defense Contracts, 36 Mil. L.R. 61, 76.' "

One decision found in the Federal Supplement related to the removal of restrictive markings by the government. In the case of International Engineering Co. v. Richardson, Federal Supplement Vol. 367, p. 640, October 24, 1973, decisions to strike restrictive legends must conform to DAR (ASPR) 7-104.9(d). The contracting officer must substantiate denial of restrictive legends on proprietary data. In addition, due process requirements of the DAR (ASPR) demand at the least that the contracting officer independently review any staff opinion he adopts, and that he have a factual basis for his subjective decisions.

> ". . . it is important to note that ASPR-7-104(d) is seriously lacking in adequate standards for striking a restrictive legend and in adequate procedures including notice of specific objections by the contracting officer, opportunity to present evidence and to cross-examine adverse witness. In addition the regulation does not provide for administrative findings and conclusions on the record made before the contracting officer."

4.2 History of Data Management Policies and Procedures. The top level objectives of the DoD and Departmental data management programs are to (1) prevent the establishment of unauthorized or duplicative information requirements and to (2) assure optimum effectiveness and economy in the flow of information within, from, and to the DoD. To these ends, some of the recurring policy aspects of DoD and Departmental instructions, directives, and memos relating to data management are as follows:

1. To ensure economy and consistency, contract data requirements will be selected from an approved list (as of this date, the AMSDL).

2. Delivery, and even ordering, of data will be deferred until such time as it is needed.

3. All contract data requirements will be listed in one place in the contract (the CDRL, Form DD 1423).

4. Each RFP is required to include data requirements.

5. Data will be acquired in the contractor's format to the maximum possible extent.

6. Data will be ordered on a cost/benefit basis (one of the costs being that of not having the data).

7. Data requirements planning will run concurrently with systems planning.

8. Data requirements will be reviewed by an office other than that of the initiator.

9. Offerors will price data in their proposals submitted for evaluation.

These policies are found with a degree of consistency in DoD guidance (DODI 5000.2, DODD 5000.19, DODI 5000.32, DODI 5010.12) and in that issued by the military departments (AR 700-51, NAVMATINST 4000.15A, and AFR 310-1).

Data management has matured over the last fifteen (15) years, commencing with the original issuance of DODI 5010.12 in 1964, through the 1980 revision of the Acquisition Management Systems and Data Requirements Control List (AMSDL) revision of July 1980. During this time the basic policy and goals for the acquisition and management of data have remained relatively unchanged. There is an obvious need to define what data is required, acquire

that data with appropriate usage rights, and finally to efficiently and effectively use the data for the stated purpose. As may be seen from Figure 4-1, there were three general groups of activities taking place in the area of data management. First, from about 1964 to 1973 there occurred the promulgation of DODI 5010.12 and supporting service instructions. Secondly, during approximately the same time, three major studies in the field of acquisition/ management were conducted. Thirdly, from 1976 to the present, a broader acquisition management policy (A-109, DODD 5000.1, DODI 5000.2) has been formulated. Taking a broad-view look at the development of technical data management, one trend appears: there was a "by the numbers" emphasis via DODI 5010.12, followed by major studies, followed by an infusion of more interpretive guidance such as OMB Circular A-109. However, the implementing instructions within the Department of Defense still appear to be interpreted in a very strict manner. Here then is what historically has bedeviled the field of data management; strict interpretation.

The following problems are some of the seventeen cited in the CODSIA study on management systems contracts: 3/

> "The interrelated segments of the DOD Data Management Program(s) are not adequately defined and delineated due to a lack of identification of parameters each segment of the data management program(s) should address."
>
> "Multiple, uncoordinated sources of data requirements within the government, operating at the contractor government interface, continue to impose requirements for data and information on contractors."
>
> "Data requirements are imposed by SPO's who react to requirements but not necessarily the intent of the established Data Management Program(s). There is very little feedback analysis information; and data management aims are not adequately understood."
>
> "Present DODI 5010.12 data policy on ADLs addresses only Technical Data. Because all deliverable data must be listed on the DD 1423 form on contract(s), Data Management Officers (DMOs) involve themselves in other types of data. There are no systematic procedures covering this in all military departments. Consequently, the DMOs are placed in an uncertain position regarding their authority and responsibilities re technical data."

"The techniques applied to the control of data vary greatly without any apparent pattern. There is little evidence of a consistent policy on such things as schedule, acceptance, approval and incentive. This occurs even though the basic purpose of data management is to apply the same principles and techniques of management to data that are applied to hardware."

"Many reporting requirements came from sources not currently being reviewed in total management systems area, e.g., ASPR(s), MIL. SPECS., MIL. STDS."

These problems are as real today as they were twelve (12) years ago.

An attempt was made in 1978 to promulgate a manual that would provide guidance in all facets of data acquisition and management. This manual, DOD 5000.32-M, was circulated to the Military Departments, but it was so complex, contained such sweeping requirements, and was generally inappropriate for use by program managers, that it was never formally promulgated. Today, data management is still being conducted by the various parochial entities within DoD, and this is not stated in completely negative terms. There must be checks and balances in the administration of the details of data management. The legal organization has a different charter from the Contract Administrative Service Component, who has a different charter from the Office of Federal Procurement Policy.

4.3 Trends in Data Management, Data Rights, Policy and Procedures. There are two primary forces evolving as contributors to the area of data and data management. First, there is an effort emerging within the Department of Defense attempting to bridge the gap from the policy makers to the program managers. There has been a good deal of interest expressed in this area. Even though the program manager has been designated as the single responsible individual, there are many functional groups that have been assigned specific programmatic responsibilities across programs, and therefore can impact the program manager. Efforts are underway ' inimize the impact on program managers when new departmental guidance is issued.

Secondly, there are changes underway that are being implemented by regulation and/or legislation. As an example, there is a continuing emphasis on the modification of Government patent policy to enhance the position of small business. Also, the process by which the Federal Acquisition Regulations are being developed may have an impact on the way major systems will ultimately be acquired. As a by-product of the issuance of OMB Circular A-109, there is a growing movement towards the application of A-109 type concepts to the area of data and data management by way of looking at management systems. The data requirements for a major acquisition should, of course, be tailored to the specific requirements. But going beyond the tailoring of the data, there is benefit to be gained by tailoring the degree of application of the system that generates the data. It would be a departure from the method by which the Cost/Schedule Control Systems Criteria (C/SCSC) is normally applied to contracts, to require only certain parts of the effort to be under C/SCSC. Perhaps if a major effort was made to tailor C/SCSC to software development, there would be an improvement in the way the Government acquires this high cost/risk item.

The third approach is continuing to standardize general data requirements and reduce the physical number of data related items, such as DIDs. Also, a recent memorandum from the Under Secretary of Defense (R&E) stressed that when military standards/specifications were prepared or revised, the data requirements would also be reviewed and revised as approriate. It is anticipated that in the future, when a management system is tailored and applied to a contract, the data requirements will also be tailored at the same time, to avoid what currently occurs, the application of systems without regard to data requirements.

4.4 Project/Program Office Interviews. As part of this research effort, DAI conducted interviews with key personnel of Project/Program Offices for more than a dozen major competitive weapon system acquisitions. The interviews were conducted to gather historical information on data and data rights problems. Overall, the interviews indicated that no major or critical problems regarding data or data rights exist in the competitive acquisition of the weapon systems cited in Table 4-1.

TABLE 4-1. PROJECT/PROGRAM OFFICE INTERVIEWS

System Acquisition	Military Department	Departmental Command
XM-1 Tank	Army	Tank/Automotive Materiel Readiness Command (TARCOM) Warren, Michigan
XM-1 120 mm Gun	Army	Armament Research and Development Command (ARADCOM) Dover, New Jersey
DIVAD	Army	Armament Research and Development Command (ARADCOM) Dover, New Jersey
C-5A Mod	Air Force	Aeronautical Systems Division (ASD) Wright-Patterson Air Force Base
NGT	Air Force	Aeronautical Systems Division (ASD) Wright-Patterson Air Force Base
E-4	Air Force	Electronic Systems Division (ESD) Hanscom Air Force Base
Flight Simulator	Air Force	Aeronautical Systems Division (ASD) Wright-Patterson Air Force Base
KC-135	Air Force	Aeronautical Systems Division (ASD) Wright-Patterson Air Force Base
E-2C	Navy	Naval Air Systems Command (NAVAIR) (PMA-231)
F-18	Navy	Naval Air Systems Command (NAVAIR) (PMA-265)
SES	Navy	Naval Sea Systems Command (NAVSEA) (PMS-304)
ASPJ	Joint	Naval Air Systems Command (NAVAIR) (PMA-272)
HARM	Joint	Naval Air Systems Command (NAVAIR) (PMA-242)

Synopses of relevant data and data rights aspects of each competitive weapon system acquisition cited in Table 4-1 are presented below:

XM-1 Tank

The XM-1 Tank is being developed by the Army as a replacement for the M60 series tanks, which themselves were updated versions of the M48 series. The XM-1 has been developed under three contracts that were of interest to this project. The first two were awarded to General Motors (GM) and Chrysler following a Request for Proposal (RFP) for the development of a new Main Battle Tank (MBT) prototype. The RFP stated that contracts were to be competitively awarded for the development of two prototypes with a contract for Full Scale Engineering Development (FSED) awarded to the builder of the most successful prototype in terms of price and performance. While the RFP was submitted to a number of firms, only GM and Chrysler elected to respond. Since both were assured of being awarded a contract if their proposals were responsive, the Army did not generate as much competition as was hoped for. These contracts were Cost Plus Incentive Fee (CPIF) and were awarded in 1973.

Chrysler was subsequently awarded a cost plus fixed fee design-to-cost contract for FSED in 1977. This contract also contained options for the first and second years of production. Under this design-to-cost contract, design changes that do not adversely affect system performance and/or program cost or schedule do not require government approval.

The final version of the XM-1 uses a gas turbine engine and the Federal Republic of Germany's (FRG's) 120 mm gun. Additionally, data on the AVCO gas turbine engine has been submitted to the FRG in support of a proposal to fit Germany's MBT with the gas turbine engine (tabled for now). As a result, technology is being transferred between the US and the FRG, adding an international flavor to the history of data requirements and data rights with respect to the XM-1.

In addition, the designs of both GM and Chrysler had to accommodate the interchangeability of each other's engines (one diesel and one gas turbine).

As a result, a large amount of data had to be exchanged between Chrysler and GM. Neither contractor exhibited any reluctance in exchanging the information, possibly because it was unlimited rights data, anyway.

XM-1 120 mm Gun

As mentioned above, the FRG's 120 mm gun was chosen as the main armament for the XM-1. The project office does not manage the production of the gun itself, but manages the procurement of the ammunition for the XM-1 gun. Since the gun and its ammunition had already been developed by Germany, the acquisition project is clearly one of technology transfer. As a result, the government is not paying for developmental work, nor any data that might have resulted from it. Although FRG manufacturing techniques are not followed to the letter, dimensional and performance specifications are maintained to ensure interchangeability.

The production contract was competitively awarded in August 1979 to Honeywell, Inc., which was selected over several other bidders. The contract calls for the delivery and translation of over 10,000 pages of German documentation. Some questions have arisen with respect to data rights and patent rights. There have been some U.S. patents filed on behalf of some of the German inventors that are causing some minor problems. These problems were not entirely unforeseen and are currently being resolved by the U.S. and FRG governments. Project Office personnel consider the question of patent infringement as minor. In addition, one U.S. subcontractor has asserted that portions of his manufacturing process are proprietary and could be determined by analysis of his product. Program Office personnel do not consider the subcontractor's assertion to be a major problem.

This particular weapons system acquisition involves an interesting combination of circumstances, including international technology transfers of intellectual property to be used for reprocurement. U.S. funding is not required for the development of these products or processes.

DIVAD Gun System

An interview was conducted at the Division Air Defense (DIVAD) Gun System Program Office in Dover, New Jersey, regarding the two competing DIVAD systems, one developed by General Dynamics and the other by Ford Aerospace & Communications Corporation. The contracts were awarded on a fixed price basis, utilizing a four step process. The Contracts Data Requirements List (CDRL) from the Phase I effort contained only twenty-five (25) data items, and those were primarily related to ordnance and safety. This program was truly a case where the Government let the contractor conduct the program with a minimum of interference.

The Phase I prototype effort was completed on time and both systems are currently in a competitive demonstration at Ft. Bliss, Texas. The winner of the competitive demonstration will complete the development program and undertake initial production. In opposition to the prototype construction contract the initial production contract will contain over forty (40) pages of CDRL items. In addition to over one hundred forty (140) data items, the DD Form 1660, Management Systems Summary, contains over seventy (70) management systems. These data items and management systems reflect the decision of the Program Manager to eliminate nonessential contractual data requirements.

C-5A Mod

The C-5A Mod is one of a number of system acquisitions being managed by the Airlift and Trainer Systems Program Office. This program involves the design, fabrication, and installation of modification kits to correct structural problems that have surfaced on the C-5A. The acquisition is being accomplished under two contracts. Both were awarded on a sole source basis to Lockheed, which originally designed and built the C-5A. Phases I and II of the acquisition, (1) modification kit design and fabrication, and (2) installation and test, have recently been completed. Current activity is in Phases III and IV, fabrication and installation of the modification kits. One of the reasons this Program Office was chosen was to see whether or not the award of a contract on a sole source basis had any impact on either data requirements or data rights.

The Program Office is cognizant of the problems and limitations that exist as a result of awarding the sole source contracts to Lockheed, as a Senate committee is currently investigating the propriety of the contracts. Since the acquisition was sole source, the Program Office has required the delivery of a reprocurement data package from Lockheed. The data within this package, which includes drawings, parts lists, process specs, installation instructions, etc., is required to be delivered with unlimited rights.

Though there has been some speculation that the lack of data and/or data rights procured with the C-5A were contributing factors for a sole source award, the Program Office advised that they based their decision to award the sole source contracts to Lockheed was primarily based on tooling constraints, cost and schedule demands, and "know how".

NGT (Next Generation Trainer)

The NGT program was in the earliest phase of the acquisition life-cycle of any Program Office visited and accordingly appeared to conform more with the OMB A-109 specified policy of multiple competitive alternative concept formulation efforts than did the other Program Offices. The NGT Program Office has awarded five fixed price contracts for the definition of alternative concepts (Phase I of the program) capable of meeting mission requirements. These are one hundred twenty (120) day efforts that will result in the delivery of a final report.

Phase II of the program is for FSED of one of the concept definitions submitted under Phase I. The Program Office is currently preparing an RFP for Phase II. The Program Office acknowledges that some limited rights data may be included in the concept definitions, however, they do not anticipate any problems in arranging for limited rights data of one firm to be made available to a competitor. Each contractor's proposal will be judged in its entirety against source selection criteria and performance requirements, and not against the proposals of other contractors.

E-4

The E-4 is the U.S.'s Airborne Command, Control, and Communications (C^3) Post and is an enhancement of the EC-135. Development of this system has historically required "paired" contracts - one awarded to Boeing (sole source, fixed price) for an airframe (747) and others awarded for the design and/or installation of the C^3 equipment into that airframe. These latter contracts have been of varying types, but were awarded on the basis of competitive proposals. Boeing and E-Systems have been the primary competitors for the "2nd" contracts awarded in each developmental phase of the E-4.

During the first phase of the E-4 program, where the EC-135 equipment was installed in three 747's, E-Systems was awarded the contract to install the C^3 equipment. In order to do so, E-Systems required a considerable amount of limited rights design data developed by Boeing. Any E-Systems requirements for Boeing's proprietary data were communicated directly to Boeing by E-Systems. Boeing would then determine what data it would supply to E-Systems and what rights were attached to the data. No major problems have arisen regarding data and data rights as a result of this contractor to contractor exchange.

The life-cycle of this system acquisition has been somewhat unusual in that the first set of contracts awarded called for the installation of existing C^3 equipment into three new airframes. The second phase, however, involved both the design and installation of a new C^3 suite into the 747. The third phase is again installation oriented, installing a new C^3 suite.

Flight Simulator

Simulators today are basically computer systems relying on other embedded systems. There is a big problem in confusing these embedded computers with commercial ones. By and large, the government segment comprises the largest portion of the simulator market, although the commercial market is substantial.

Singer, the largest manufacturer of simulators, claimed to have developed at corporate expense special simulator software that was universal in its application and required minor modifications from plane to plane. The government did not believe Singer funds had entirely supported development and Singer has not been able to substantiate its claim as yet.

Singer objected when the government sought to release their programs to other contractors for modification. As a result, the government agreed to release software to other contractors for future modifications under the provision that these contractors not make any commerical use of the software.

Program Office personnel feel that the problems may have resulted from the ambiguities in DAR 9-500 and 9-600 relating to the acquisition of computing systems, in that DAR did not differentiate between embedded computer systems and commercial computer systems.

KC-135

The KC-135 is an airborne Air Force tanker. The system was originally procured in 1954, having been built by Boeing as an Air Force prototype. The design of this prototype is the basis of Boeing's commercial 707 series of passenger jetliners. Owing to the age of this system, major modifications were necessary, primarily in the need to re-engine the plane and to modify related and/or other affected systems. Boeing has historically been tasked to perform major engineering changes to the KC-135.

At the outset of the re-engine program, the government wanted to compete the redesign effort. However, Boeing claimed that nearly all the design data relating to the 707 was proprietary and was not releasable to competitors. When the government asked for an estimate of what it would cost to secure sufficient rights in data to compete the redesign award, Boeing quoted a figure of $300 million. Obviously, this figure exceeded any anticipated potential savings that might be realized from competition, and accordingly the government is awarding the redesign contract to Boeing on a sole source basis. However, the government still has the option to compete the award for

installation of the modificaion package. The Program Office felt that the design data could have been acquired at minimal cost had it been ordered at the time the prototype was being designed.

E-2C

The E-2C is a Naval Air Systems Command (NAVAIR) designated major system acquisition managed by PMA 231. The E-2C is the latest development of the E-2B, the history of which goes back to the mid 1950's. The first production E-2C Airborne Early Warning (AEW) aircraft were delivered in 1974 following an R&D effort that began in 1968. Contracts for these two phases were awarded on a Fixed Price and a Cost Plus Incentive Fee (CPIF) basis, respectively. To date, about fifty five (55) E-2Cs have been delivered and the Navy plans to buy about six per year for the next four to five years for a total deployment of eighty five (85) to ninety (90) aircraft. Though most of the E-2C development took place between 1968 and 1974, some additional major design improvements were funded in 1977. Some E-2Cs have been delivered to both Israel and Japan. Grumman was awarded both the design and production contracts for the E-2C on a sole source basis and is now the only qualified builder of the plane in the world.

The E-2C is a mature and stable system acquisition. Data packages were bought only under the first production contract. Since then, only revisions to the data have been purchased. In none of its E-2C proposals has Grumman separately priced data items.

Additionally, there has been only one major dispute regarding data in which Lockheed claimed that Grumman had used a Lockheed developed process in the E-2C design. The dispute was between Lockheed and Grumman only and did not involve the Navy in any way; i.e., the Navy did not make any limited [illegible] Lockheed data available to Grumman. Lockheed subsequently won the [illegible] but the litigation did not affect the project office's management of the [illegible] at all.

F-18

The F/A-18 is being developed as a light weight, low cost fighter (F-18A) and attack (A-18A) aircraft by PMA-265, a major project in the Naval Air Systems Command. Both versions are to be carrier compatible and will also see service in the Marine Corps. The design grew from the Northrop built YF-17 that had been competed against the General Dynamics F-16 in an Air Force fly off and had lost. MacDonald Aircraft Corporation (MACAIR) and Northrop teamed to make changes in the design that became the F-18. Under this teaming arrangement, MACAIR builds about 60% of the airplane, with Northrop completing the rest. A Defense Systems Acquisition Review Council (DSARC) II was held in 1975 that approved commencement of Full Scale Development (FSD). MACAIR (as prime contractor) was awarded a Cost Plus Incentive Fee contract calling for eleven prototype aircraft to be built. Thus far, four have been delivered. A DSARC II (Production decision) was scheduled for July 1980 but because of a funding misalignment, was instead designated a Program Review.

A novel approach to testing the F/A-18 is being used in that both contractor and Navy testing is being conducted at the Naval Air Test Center, Patuxent River, Md. The purpose of this approach is to eliminate duplicative testing, save costs, and expedite Fleet introduction. A number of Navy Preliminary Evaluations (Development Testing) have been completed and the airplane is undergoing Initial Operational Testing now. The airplane is powered by two F-404 engines built by General Electric (GE) at Lynn, Massachusetts under a Cost Plus Incentive Fee contract.

SES

PMS 304 is the NAVSEA project office responsible for the application of Surface Effects Ship (SES) technology. To date, the project office's largest contractual effort was the design and construction of a 3,000 ton, fully militarized, 100 knot, Surface Effects Ship. The contract for this system, terminated in GFY 80, was awarded to Rohr Marine, Inc. (RMI) following the evaluation of competitive proposals submitted by RMI and Bell Aerospace. This system incorporated many highly advanced ship systems, as well as a concept previously applied only to much smaller vessels; i.e., the 100 ton range. As

a result, RMI was awarded a cost plus fixed fee contract to develop the 3KSES (as it came to be known).

Besides exhibiting the desired characteristic of competitive award, the system acquisition project is also the only one of the group studied to be terminated. It was chosen in order to evaluate the impact, if any, of contract termination on data and data rights. Additionally, the project office had recently experienced some controversy relating to alleged patent infringement by a major subcontractor.

The termination of the contract had no effect on either the delivery of required data or the rights in that data. To a great extent, problems were avoided because the project office determined just what information was required in light of the termination and provided the funding necessary for RMI to record and deliver it. The problem with the question of patent infringement became a moot point as far as PMS 304 was concerned once the contract was terminated. PMS 304 was one of the few project offices visited that had a dedicated data manager. This apparently is not uncommon within the Naval Sea Systems Command, however.

ASPJ

The Airborne Self Protection Jammer (ASPJ) is a joint Navy/Air Force system acquisition. The Navy is the lead service for this acquisition with PMA-272/PME-107-7 (Advanced Tactical Aircraft Protection Systems (ATAPS)) serving as the Project Management Office.

ASPJ exhibits a very interesting competitive acquisition philosophy. Three Joint Ventures competed for Phase I of Full Scale Development (FSD). One venture was eliminated and the two remaining, Sanders/Northrop and ITT/Westinghouse, were awarded start up contracts in February 1979. Full Scale Development commenced in September 1979 with the award of cost type contracts. The acquisition strategy is somewhat unusual: these two teams/ventures are competing in Phase I, design and critical item demonstration, which covers a period of about seven months and ending in January or February 1981. The winning venture will continue teaming for Phase II of Full

Scale Development, Engineering Development Model (EDM), fabrication, assembly and test, an effort lasting seventeen (17) months. Phase II contracts are anticipated to be of a Cost Plus Award Fee type. Following production approval, the winning venture will compete for production with the winner getting a larger share of production.

HARM

The High Speed Anti-Radiation Missile (HARM) is another jointly developed system (Navy/Air Force) with the Navy serving as the lead service. PMA-242, the Defense Suppression System Project, is managing this joint acquisition. The Navy's A-7E and the Air Force's F-4G are envisioned as the primary vehicle for this new missile.

Development of this weapon system began in 1972 with the award of numerous R&D contracts. One of these, a Cost Plus Fixed Fee (CPFF) type was awarded to Texas Instruments (TI) for design studies. The project has since moved thru two phases of advanced development (awarding CPAF and CPIF contracts, respectively). At the time of award for Advanced Development II (late 1974), PMA-242 selected TI as the prime contractor for and systems integrator for HARM. TI was later awarded a CPIF for Phase III of the system acquisition. Texas Instruments is respnsible for the development of the seeker section of the missile, the control section, and its wings and fins. A DSARC review in November 1980 was held to determine the feasibility of moving beyond the prototype stage to the production stage. It is anticipated that about 45 missiles would be procured under this contract, which will probably be awarded on a Cost Plus Incentive Fee to Texas Instruments.

4.5 Local Interviews. In addition to DAI's Project/Program Office interviews, local experts in data and data rights were contacted and personal interviews were conducted with the following:

Mr. Vince Mayolo	Defense Material Specifications and Standards Office
Mr. Donald Mitchell	Defense Material Specifications and Standards Office
Mr. William Murphy	Naval Air Systems Command, Data Requirements Review Board
Mr. Ralph Nash	George Washington University
Mr. Edward Schaad	Naval Electronic Systems Command
Mr. Herman Shipley	Office of Management and Budget
Mr. John Wenderoth	Office of the Secretary of Defense (Comptroller)
Mr. Robert Crawford	Naval Material Command (Patent Liaison)
Mr. Franz Ohlson	Aerospace Industries Association of America
Mr. Robert Kempf	National Aeronautics and Space Administration
Mr. G. T. McCoy	National Aeronautics and Space Administration

Rather than synopsize the interviews conducted with each of the above, their comments are reflected in DAI's results and recommendations (see Section 5). In all cases of interviews, it was made clear at the outset that the interviews were not audits, and participation was voluntary and conducted on a "non-attribution" basis.

5. RESULTS AND RECOMMENDATIONS

5.1 Introduction. The results and recommendations presented in this section are the product of DAI's research efforts. These efforts included the identification and analysis of pertinent judicial and administrative rulings, the analysis of applicable OMB, DOD, and Military Department memos, circulars, instructions, and directives. Also conducted were reviews and analyses of applicable DAR (ASPR) sections, special government sponsored reports on DoD procurement as related to and/or impacted by data and data rights, and the identification and review of other literature based sources of data and data rights information. Interviews were conducted with representatives of acquisition program offices and individuals involved in data and data rights policy throughout the government.

The recommendations contained in this section are intended to assist program managers and data managers in conducting those efforts relating to data in a more efficient and effective manner. In addition, potential problem areas relating to the acquisition of data, the management of data, and the resulting rights in data are discussed. Each manager must evaluate the application of any particular recommendation to his own particular situation after weighing the pros and cons.

Section 5 is divided into two broad topics of discussion. Section 5.2 deals with results and recommendations relating to the program manager's responsibility to manage the acquisition of data. Section 5.3 discusses the rights which attach to data acquired by the government. Within Section 5.2, Data Management, the cost of data, the qualifications and training of data management personnel, and the administrative procedures relating to the acquisition of data are each discussed in turn. Again, each program manager must assess the results and recommendations presented herein in light of his own particular situation.

Data Management and Rights in Data each represent a separate topic of concern for the project manager. However, since the two are so closely

related, there is sometimes a tendency to blur the distinction between them. The link between data management and data rights is the program manager's responsibility to acquire data which is sufficient for its intended use, whether it be for system acquisition, for logistics support, or for reprocurement. In order to be sufficient for its intended use, reliable data must be available (the data management function) and the government must acquire rights in the data necessary to support its use as needs arise. Note that rights in data and data availability/reliability are conjunctive -- you must have both to make data useful. This responsibility is hard to fulfill, primarily because of the need to anticipate the future needs and uses of the data.

5.2 Results and Recommendations: Data Management.

5.2.1 Cost of Data. Program managers and data managers should consider the feasibility of establishing feedback to functional personnel on the cost of data items. This feedback does not occur automatically without additional effort. Knowing the cost of data items would allow functional personnel and data managers to evaluate data items and make trade-offs based on total value to the government (both essentiality and cost).

Contractors do not separately price data items in their proposals unless specifically requested to do so. Even when so requested, compliance is often spotty. To some extent, this may be due to the contractor's uncertainty as to the cost of data rather than to willful concealment. In pricing data, it is very difficult to separate the cost of performing the work, which inherently results in the development of information, and the cost of recording and delivering that information (the "over and above" concept). In addition, data managers are not usually involved in the negotiation of data prices and, more frequently than not, they do not know the results of negotiation. Quite often neither the government nor the contractor knows the exact cost of data to be delivered since the cost is often negotiated as a lump sum and is not separately priced (NSP) as a contract line item. Even when data is a separately priced line item, negotiators normally do not go back and breakout or distribute the final negotiated price to individual data items. Thus, the implementation of this recommendation will depend primarily on availability of

cost information. A "cost of data" feedback loop would make data managers and functional personnel more cost conscious and allow them to make better evaluations of data requirements.

5.2.2 Personnel Considerations. The program manager can mitigate potential problems in data management by careful evaluation of personnel qualifications and organizational relationships. Even in the largest program offices it is not uncommon to find no dedicated data manager. Often the data management duties are additional tasks performed by other engineers or the configuration manager. Data managers may be military or civilian with a wide variety of backgrounds. No minimum qualifications in terms of data management training or experience have been established within the civil service for these program office positions and, as a result, the quality of staffing varies widely, as does the ability of the individual to perform his assigned duties.

Even if the program manager is aware of personnel or responsibility problems in this area, he is likely to have limited alternatives. Established job descriptions, existing staff, and higher priority vacancies may make changes difficult. However, when opportunities do exist, the program manager should insist on accurate position descriptions and selection criteria that include data management qualifications and experience. If qualified personnel are not available, then some type of training program may be the only possible solution.

5.2.3 Administrative Procedures. Data managers and program managers should be aware of administrative considerations that will help them manage acquisition of data. The Air Force, Navy, and Army currently manage the acquisition of data via the procedures prescribed in each department's own regulations and instructions (Air Force Regulations 310-1, NAVMAT Instruction 4000.15A, and Army Regulation 700-51). There is no comprehensive Department of Defense instruction relating to acquisition of data. As previously mentioned in Section 4.2 (History of Data Management Policies and Procedures), an attempt to establish policy across all DoD components was undertaken with the preparation of the draft of DODI 5000.32M. As of the date of this report,

no additional effort is in process to continue the development of any DoD level policy.

Whenever possible, a draft SOW or RFP should be available to data managers and functional personnel prior to the data call. The program manager might convene a meeting with his data manager and the various functional specialists to review existing system specifications and the SOW/RFP to provide a better understanding regarding the type and extent of data required for the data call. This will allow submission of a tailored data package based on program requirements, rather than a generic data package based on what has always been requested in the past. However, the application of previously successful data item descriptions should not be ignored.

The program office or data manager also needs to conduct a critical review of all data requests. This function should not be left to the Data Requirements Review Board (DRRB). The DRRB is usually too busy and may not possess sufficient knowledge of program details to evaluate all data requirements. They will verify the format of the DD 1423 and insure that requests for data are properly completed and correctly reference source documents.

5.2.4 Data Management and Quality Control. One of the conditions necessary for data to be useful is reliability; and one of the most important activities which ensures reliability is quality control. The control of quality begins at the very start of the process through which data requirements become part of the contract. This is the point at which the level of detail required in the data and the contractor's systems and procedures through which the data are generated are both determined. Thus, it is important, not only in terms of rights in data, but also in terms of data management, to assess future needs which will arise in each phase of the acquisition life-cycle and to assess these needs in relation to other program variables; e.g., the amount of money involved, the current life-cycle position of the product/service in question, and the degree to which the contractor's internal management systems already conform to DoD Standards.

If it is determined that detailed engineering drawings may be required (for example, Level 3 of MIL-D-1000) and that the contractor will be required to follow military standards with respect to the production of these

drawings (for example, MIL-STD 100B), then an aggressive effort on the part of the program management office will be required to ensure contractor compliance. This activity is especially important since contract disputes involving defective Government Furnished Information (GFI) are becoming more frequent. However, this function, if applied to a large number of contract deliverables over which the government maintains rights of approval, would require quite a number of experienced personnel familiar with, in this example, MIL-D-1000 and MIL-STD 100B. The number of people required to perform this function may not be available within the project office. However, if a smaller number of sufficiently experienced people are available, at least a sample of the deliverable data could be reviewed in depth to ensure quality. In addition, there may be some support activities within the Systems and/or Logistics Commands that may be able to lend assistance. For example, the Naval Weapons Engineering Support Activity (NAVWESA) has a group of people who function as data inspectors. Other support activities may have similar groups of personnel whose services may be available to the program office. Technical data can also be subject to a warranty like any other product or service. Warranty provisions for technical data may be invoked through the inclusion in the contract of DAR (ASPR) clause 7-104.9(o) or, in its absence, 7-203.5, 7-402.5, or 7-901.21.

One technique that is used to accomplish some of the DoD's objectives with respect to data management is the ordering of data via the Data Accession List. This list is a data deliverable which can be ordered on the CDRL and which lists all data developed internally by the contractor. As data is needed, it is ordered from this list. As a result, the delivery of data is deferred until the need for it is apparent, contractor formats are used in their entirety, and data deliverables are confined only to minimum requirements. Each of the above are important components of DoD's program of data management. However, the Data Accession List should not be used to accomplish the above program objectives indiscriminately. The need for quality control must be considered before adopting the Data Accession List technique since, among other things, the government loses any rights of approval over data submitted via the Data Accession List.

5.3 Results and Recommendations: Rights in Data.

5.3.1 Background. The government's policy with respect to rights in data is also pertinent to the project manager. It is critical to recognize the fact that data are less than sufficient for their intended use if either (1) reliable data are not available, or (2) the government does not have the right to use data for an intended purpose. The program manager has less direct impact on rights in data than he does in the area of data management. This is necessarily so since the environment in which project managers must function includes a complex framework consisting of statutory law (both state and federal), common law, administrative rulings, and DAR (ASPR), among others, which serve to specify the rights that accrue to the government with respect to data delivered under contract. For the most part, this framework represents an environmental factor over which the program manager exerts little influence. As far as the project manager is concerned, DAR (ASPR) represents the clearest statement of DoD data rights policy. The regulations include a section dealing with policy (Section 9) and a section of clauses which serve to implement the policies presented in Section 9 (Section 7). DAR (ASPR) Section 9 addresses DoD policy with respect to patent rights (9-100), rights in technical data and copyrights (9-200), and rights in computer software (9-600). Rights in financial data and administrative/management data are not discussed in Section 9 of DAR(ASPR).

DAR (ASPR) (Section 9-202.1) recognizes the valid interest which contractors have in preventing the disclosure of data relating to items, components, and/or processes which they have developed at their own expense. This data may be of a technical, software, financial, or management nature and may or may not be covered by a patent (see Section 4.1.4). However, the Department of Defense, in light of its mission and the contracting philosophy under which many major systems are procurred, requires large amounts of technical data, software data, and other nontechnical data. As the DoD acquires the data necessary to prosecute its mission (the data management function, discussed in Section 5.2), it may find that some data has been submitted with restrictions as to use. These usage restrictions place constraints upon the disclosure of such data and may not permit the data in question to be used to satisfy a given need, the most frequent examples being reprocurement of the system,

procurement of spare parts, and system modification. In Section 5.3, the other half of the question of data sufficiency will be addressed - that of rights in data. Rights in patents will also be discussed.

5.3.2 Rights in Technical Data. According to DAR (ASPR), technical data is defined as recorded information, regardless of form or characteristic, of a scientific or technical nature. Technical data encompasses computer software documentation, but does not include computer software itself. Nor does it include financial data or administrative/management data. (See the dictionary for further clarification.) Program managers are responsible for securing technical data with rights sufficient for its anticipated uses. In essence, DAR(ASPR) requires that a contractor submit all technical data with unlimited rights (see Dictionary) except for that technical data which relates to items, components, or processes developed at private expense. However, even this data will be delivered with unlimited rights under certain circumstances. For example, such data could be included in manuals or might constitute changes to government furnished data, or negotiations with respect to rights may have resulted in data developed at private expense being delivered to the government with unlimited rights. Also the data may be of a "form, fit, and function" nature. In these, and certain other instances, the government may properly acquire data relating to items, components, and/or processes developed at private expense (i.e., limited rights data) with unlimited rights.

While DAR (ASPR) recognizes certain instances under which limited rights data can be acquired with unlimited rights, the regulations do not support attempts to acquire rights in data that exceed those to which the government is entitled unless the contractor is fairly compensated. Indeed, there is some congruence of interests in that the Department of Defense seeks to encourage the development of militarily adaptable technology at private expense. Obviously, contractors will not be encouraged to do so unless they perceive a commitment on the government's part to protect such data once it is submitted. Thus, an even handed approach with respect to rights in data is required to encourage innovative approaches to DoD mission needs as well as to encourage competition in the procurement of major weapons systems. These considerations of innovation and competition are two of the primary goals of

OMB Circular A-109. However, the desire for competition in the reprocurement of weapons systems and in the procurement of spares and repair parts tends to encourage the government to seek unlimited rights in technical data, as does the goal of developing second sources of supply. So, while the interests of the DoD and those of the contractor are shared to some degree, there are very strong incentives for acquiring technical data with unlimited rights even though it relates to items, components, or processes developed at private expense.

5.3.2.1 Negotiating for Rights in Technical Data. Even when the necessary technical data is available, rights do not necessarily exist which permit the data to be used as intended. This situation is most often discovered after responsibility for the weapons system has been transferred to those departmental organizations responsible for logistics support. It is, however, the program manager's responsibility to acquire the necessary rights in data early in the acquisition life cycle. To do so, the program manager must first identify the potential uses of the data. If it is determined that proprietary (i.e., limited rights) data will be required to support a competitive reprocurement program or the competitive procurement of spares/ repair parts, then (1) the data relating to items, components, and/or processes developed at private expense must be identified and (2) the acquisition of unlimited rights in data must be negotiated.

5.3.2.1.1 The Predetermination of Rights in Data Process and Specific Acquisition. DAR (ASPR) provides for the identification of data relating to items, components, and/or processes developed at private expense through a procedure called predetermination of rights in technical data. At the discretion of the program manager, the contracting officer, or the offerer, this procedure may be initiated through the inclusion of DAR 7-2003.61 in the RFP. Program managers should specify that technical data for which a predetermination of rights is desired. The offeror will then identify the technical data which he intends to submit with limited rights. Just because the contractor claims that certain technical data is of a limited rights nature, this does not mean the government necessarily accepts the offeror's assertion. If so requested, the offeror must furnish clear and convincing proof that his claim as to the limited rights nature of the data is

justified. It is important to note that the burden of proof lies with the contractor, not the government.

If the DoD needs to acquire unlimited rights in limited rights data (whether identified through predetermination or not), the program office may negotiate with the offeror to obtain such rights. If the need to acquire unlimited rights in limited rights data is properly documented, these unlimited rights will be included as a separate line item in the contract schedule and priced separately. This procedure is referred to as specific acquisition.

Though the predetermination procedure and the specific acquisition of unlimited rights in technical data are both sound conceptually and would seem to provide the basis for avoiding potentially serious rights in data problems further along in the system's life-cycle, each process has serious limitations when it comes to implementation. With respect to the predetermination of rights in technical data, the program office must challenge the contractor if their claim to the protection afforded limited rights data is disputed by the government. Although the burden of proof does indeed fall to the offeror, the time it takes to assemble evidence to support the claim(s) in question in conjunction with the time it takes to review the documentation may constitute an unacceptable delay in the award of the contract. In addition, for unlimited rights to be acquired in limited rights technical data, it must be shown formally and in writing that:

(1) there is a clear need for reprocurement of the item, component, or process to which the technical data relates;

(2) *no acceptable* substitute is available;

(3) the data in question is sufficient to permit a competent party to manufacture the items or components in question or to perform a process without the need for additional data not obtainable at a reasonable cost; and

(4) the anticipated net savings in reprocurements will exceed the cost of the technical data and the associated rights.

The difficulty encountered in documenting the above requirements tends to discourage the specific acquisition of unlimited rights in limited rights

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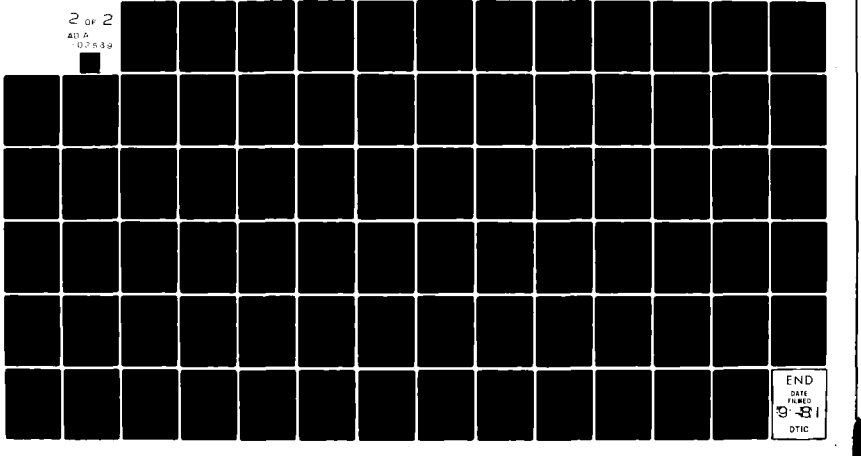
ANALYSIS OF CURRENT POLICIES AND PRACTICES REGARDING DATA RIGHT--ETC(U)
DEC 80 W B HUMPHREY, M A MILFORD MDA903-80-G-0299
UNCLASSIFIED DAI-TR-251 NL



technical data. Thus, some other approaches may be necessary to acquire the rights in technical data necessary to support certain uses.

5.3.2.1.2 Options to Acquire Unlimited Rights. One strategy which can eliminate the need to go through the formal process of predetermination and thereby avoid the time trap it can precipitate is to include in a request for proposal (RFP) an option for the acquisition of unlimited rights in limited rights technical data. Such a strategy requires that the contractor identify his limited rights data before he can price it. The time trap is avoided in that the government does not challenge the contractor's claim to limited rights or exercise an option for the purchase of limited rights technical data until a need for the data becomes clearly apparent. Thus, both the government and the contractor can avoid the time and expense involved in the substantiation of an assertion of limited rights until such time as a final determination is required. This approach is preferable to a challenge before contract award since the government can never be absolutely sure that a particular element of data will be required with unlimited rights in the future. For example, a change in specifications or termination of the contract would render a front-end effort to predetermine rights in data somewhat wasted. More importantly, contract award is not delayed pending an agreement over rights in data.

A second strategy, similar to the first, can be applied to non-negotiated awards. In the first case, the contractor priced out, as an option, unlimited rights in limited rights data. Under this second strategy an invitation for bids (IFB) would specify unlimited rights in data be priced out as a separate line item in the offeror's response. This approach provides the government with the opportunity to compare the cost of purchasing unlimited rights in limited rights data with the cost of paying another contractor for the development of similar data (in which the government takes unlimited rights in accordance with DAR(ASPR)). In addition, the non-negotiation aspect requires contractors to price unlimited rights in limited rights data more reasonably since an unreasonably high quote (which is possible and likely under the first strategy) will effectively remove their offer from consideration.

5.3.2.1.3 Acquisition of Rights through Follow-on Contracts. In cases where the government has a strong bargaining position, a third strategy exists whereby unlimited rights may be acquired in limited rights data. In this case, the contract would contain a clause stating that any and all limited rights data submitted under the contract can be used with unlimited rights (i.e., for reprocurement) if a production contract is awarded to the contractor for more than some certain amount. In addition, the contract will include a provision that if such data is turned over to a second source, it is done so under a "non use" agreement. In other words, the second source agrees to use it only for the purposes of the government and agrees not to further disclose the data or to use it for any nongovernmental purpose. The strategy seems to be within the provisions of DAR (ASPR) since limited rights technical data can be used for any purpose so long as the government has written permission to do so. Under this strategy, the fact that the contractor signed a contract permitting the government to take unlimited rights in technical data pursuant to the award of a production contract exceeding some certain monetary floor is construed as written permission to use the limited rights technical data for any purpose whatsoever. While this strategy satisfies the letter of DAR (ASPR), it may be in opposition to the policy of DoD to acquire rights in technical data only to the extent that such rights are essential to meet government needs. In addition, DAR (ASPR) recognizes the need to protect contractor's rights in technical data so as to encourage privately funded innovation and to ensure a ready flow of data to meet government needs not requiring unlimited rights in technical data. In light of the preceding considerations, this third strategy may not fall within the spirit of DAR (ASPR).

5.3.2.1.4 Acquisition of Licenses by the Government. A fourth approach, and one which may be the most equitable to all parties concerned, is the acquisition by the government of licenses in limited rights data (or for that matter, in patents as well). For example, a special clause in an RFP might require a quote for issuing a license in limited rights data to the government. Under such a license, which would be of a form similar to standard commercial licenses, the government would be permitted to deliver limited rights technical data to other sources of supply as government needs arise. Thus, one avenue available under a licensing strategy is to bundle

these licenses as separate contract line items at the time of contract award for hardware/services. Another approach, which has been used by the Army for a number of years, is to buy licenses in patents (or trade secrets) under the authority of 10 USC 2386. Although the Army has been the most active service in terms of purchasing licenses in technical data, the other military departments are also able to acquire licenses under 10 USC 2386. Though the intent of the statute is to promote NATO RSI (Rationalization, Standardization, and Interoperability), it is also possible to acquire licenses from domestic contractors and to subsequently license other domestic firms under the terms of the license agreement ("non-use", etc.). Contractors may, however, desire to maintain some control over the government's right to have the license practiced for its benefit. For example, agreements that allow the contractor (the licensor) to approve the use of its technical data by the prospective licensee are not uncommon. Even if such an approval provision is not part of the licensing agreement, it may be found that contractors are less than cooperative when it comes to providing data and technical assistance to licensees of which they do not approve.

5.3.2.2 *Rights Other than Limited or Unlimited.* With respect to technical data, DAR(ASPR) recognizes only two categories of rights - either limited or unlimited. This lack of flexibility in the regulations has been recognized since the Report of the Commission on Government Procurement (published 31 Dec. 1972) which recommended that statues which limited flexibility with respect to rights in technical data be amended or repealed. At present, the only process through which rights may be acquired in technical data other than those above is to request a deviation from the provisions of DAR(ASPR). There have been instances where the basic Rights in Technical Data and Computer Software has been modified so as to acquire supplies and/or services that the contractor would not otherwise furnish. So there is a precedent to deviating from DAR(ASPR) guidance if, by so doing, the innovation in procurement technique serves to better attain some desirable objective. Requested deviations affecting only one contract may be authorized according to Departmental procedures. Deviations affecting more than one contract or contractor must be approved in advance by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) or by unanimous approval by members of the DAR(ASPR) Committee. At a minimum, according to DAR(ASPR) 1-109.5, a

request for deviation must include, among other things, a full description of the deviation, a description of the intended effect of the deviation, and detailed reasons supporting the request.

5.3.2.3 Disclosure of Limited Rights Technical Data. The unauthorized disclosure of limited rights data in DoD procurements can have potentially serious consequences. In a number of cases, the Comptroller General has directed cancellation of IFB's or comparable documents relating to negotiated contracts where a company's limited rights data are improperly disclosed to potential bidders. Of course, such a cancellation could involve potentially serious program delays. In cases where the developer of the limited rights data does not file a protest promptly enough to result in the halt of a contract award, the Comptroller General will not question the legality of the contract which might have been awarded. Instead, the protestor will be directed to seek relief in the courts. This can be potentially disastrous if the technical data improperly disclosed serves to describe a contractor's trade secret. While 28 USC 1498 prevents the owner of a patent from enjoining the performance of a contract for the benefit of the government as a remedy for patent infringement, such is not the case when it comes to trade secrets. Owners of trade secrets can indeed seek to enjoin contract performance through the state courts and can halt the performance of a government contract. The potential effect on schedule delays and cost growth is obvious.

5.3.3 Rights in Software Data. Because the legal protection available to developers of software is still in a state of flux, program managers may find that contractors try to protect their privately developed software under the traditional trade secret route, under a copyright, or through a patent (or even through a combination of these, see Section 4.1.2). If a situation arises where a contractor seeks both copyright protection and disclosure restrictions (i.e., trade secret protection), he should be required to elect either one form of protection or the other. The courts have held that double protection is not legally feasible (U.S. District Court of Illinois in the case of MSA vs. Cyberg). In addition, the contractor might be reminded that 28 USC 1498(b) prohibits the contractor from enjoining government reproduction and distribution of copyrighted works. This action on the part of the

government would effectively destroy the secrecy of the work and leave little for which the contractor would seek disclosure restrictions.

In addition, it should be borne in mind that regardless of any markings which otherwise restrict disclosure, computer software documentation data which constitutes a correction to government furnished software, which is of a "form, fit, or function" nature, or is included in installation, operation, maintenance, and/or training manuals is acquired by the government with unlimited rights. Since DAR(ASPR) treats software documentation as technical data, the rights taken in the software itself are separate from those relating to the attendant documentation.

Additional flexibility is available to the program office in that other specific rights may be made part of the contract so long as they do not dilute the government's minimum rights.

5.3.3.1 Modifying Software Developed Privately. One of the minimum rights acquired by the government in software developed at private expense is the right to combine it with other software or to otherwise modify it. In cases where the government modifies software developed at private expense, those portions of the modified system which incorporate software originally acquired with restricted rights are still subject to the same restrictions that applied prior to modification. Although modification is permitted, neither software acquired with restricted rights nor its associated documentation (which is acquired under the provisions relating to rights in technical data) will be used to prepare the same software or software that is essentially similar. Though questions such as the determination of which parts of derivative software constitute modifications and which parts belong to the system as it was originally developed and when is a government prepared program essentially similar to one previously acquired that was developed at private expense seem to offer fertile ground for disputes, DAI's research did not find this to be the case. However, there does exist the potential for misunderstanding and contract diputes.

5.3.4 Restrictive Markings on Technical Data and Software. Whether or not technical data or software has been developed privately, the government

takes unlimited rights in data unless the technical data or software is marked with a contractually authorized restrictive marking. If the data is entitled to restrictions on its disclosure but was not so marked by the contractor, the contractor can remedy this situation and place (at his own expense) restrictive markings on the data provided that (1) the omission of the marking was inadvertent, (2) the use of the marking is authorized, and (3) the government is relieved of any liability resulting from the disclosure of the software or technical data. DAR(ASPR) states that the contractor must request permission to retroactively mark his data within six months of its delivery. However, this time period can be extended if the contractor seeks and is granted a deviation from the provisions of DAR(ASPR).

On the other hand, when the contractor submits technical data and/or software which is not authorized by the contract to be furnished with a restrictive marking, or if the contractor marks the data with a restrictive legend of an improper form, the government may correct the markings or cancel and ignore them. If the government wishes to challenge the markings, the contractor must be notified in writing of the government's intent to remove or correct the markings. At the time that DAR (ASPR) established the concept of limited and unlimited rights in data, it also required the contractor to substantiate his claim to the restrictive marking by providing clear and convincing evidence. Thus, if the government decides to challenge a contractor's claim to limited rights protection, the burden of proof lies with the contractor and not the government. Once notified that the government has questioned his restrictive markings, the contractor has at least 60 days to respond to the inquiry and to supply evidence that clearly and convincingly supports his claim. In the absence of a response, or if the evidence is insufficient, the government may cancel and ignore any markings on data that was not entitled to be furnished with either limited or restricted rights. If it is a question of the form of the marking rather than a question as to the right to restrict disclosure of the data, the government may merely correct the marking and thereafter use the data in accordance with its new legend. In either case, whether the markings are cancelled or corrected, the government must notify the contractor in writing of its action. Until such time as the restrictive legends are corrected or cancelled (if it is proper to do so), the government must use the data in accordance with its markings.

5.3.5 Financial and Administrative/Management Data. Under Exemption 4 of the FOIA, unclassified records are not required to be released to the public if they contain "trade secrets or commercial or financial information that a DoD Component receives from a person outside the Government with the understanding that they will be retained on a privileged or confidential basis in accordance with the customary handling of such records" (DODD 5400.7, 24 March 1980). For those program office members who handle financial and administrative/management data that come under the provisions of Exemption 4 of the Freedom of Information Act, care should be taken to avoid any misunderstanding with the contractor who submits the data. In order for the above exemption to work as intended, the government and the contractor should both be aware of the customary handling procedures which apply to the data in question and agree that the data will be accorded this customary protection. This is especially important if no other restrictive markings are placed on the data and in cases where submittal of the data is on an informal basis and bypasses some of the formal procedures which might safeguard sensitive business data.

As noted in Section 4 however, there are circumstances under which unclassified data may be released even though it does come under Exemption 4. These provisions tend to reduce the willingness of the contractor to submit data to the government. For example, contractors might be reluctant to submit "clear and convincing evidence" with respect to a claim of limited rights data. They may want the government to come and inspect the evidence at the contractor's place of business, for example. DoD recognizes the legitimacy of this concern and DODD 5400.7 further restricts the release of data covered under Exemption 4 unless, in addition to those factors enumerated in Section 4.1.3, an additional finding of compelling public interest in support of release of the data exists.

5.3.6 Rights in Data Contained in Proposals. Any proposal, whether it be solicited or unsolicited, may include data which the offeror would not want disclosed to the public for any reason or used by the government for any purpose other than to evaluate the proposal. This data may be of a technical nature, or financial, or of a management type. Regardless of the nature of the data, DAR (ASPR) provides for restrictions on the disclosure of this

data. This guidance is different depending upon whether or not the proposal has been solicited.

5.3.6.1 Rights in Data and Solicited Proposals. If a solicited proposal contains any type of data for which the offeror seeks protection, the offeror may mark the proposal in accordance with the procedures detailed in DAR (ASPR) 3-507.1. The offeror, and not the government, is responsible for placing this restrictive legend on the proposal. The proposal may not be refused for consideration due to the existence of these restrictive markings nor will the data be disclosed outside the government without the written permission of the offeror. If a contract is subsequently awarded to the offeror and if the need exists to duplicate, use, or disclose this protected proposal data, the contract should specifically provide for these rights. Whether or not the government will acquire these rights through specific acquisition is a matter for contract negotiation.

5.3.6.2 Rights in Data and Unsolicited Proposals. The same basic protection available to solicited proposals applies to unsolicited ones and is even further amplified. The submittor of a solicited proposal is responsible for affixing a restrictive legend if he desires to limit disclosure of his data. In the case of unsolicited proposals, however, the government itself is responsible for placing a restrictive marking on the data even though the offeror may fail to do so. The government is relieved of this responsibility only if the offeror provides clear written indication that he does not want to limit distribution of the data contained within his unsolicited proposal. In addition, written permission may be required from the offeror of an unsolicited proposal if the government requires outside help in its evaluation. If such outside assistance is required, a written statement must be obtained from the outside evaluator stating that no data or information contained in the proposal will be disclosed outside the government.

5.3.7 Rights in Patents. The important thing to note is that the new patent act described in Section 4.1.4 applies only to small business firms and to nonprofit organizations and that the government still acquires a license in the patented invention. As originally passed by the House, the Act also provided for acquisition of title by large business firms if these firms would

specify the general area in which they intended to commercially develop the patented invention. In its final form, however, the Act omitted large business firms from its provisions and in effect maintained the status quo with respect to the disposition of patent rights where the invention is made by a large business firm during the course of a government contract. Thus, the presidential memorandum of 1971, the provisions of DAR (ASPR), and the piecemeal legislation enacted by Congress still apply to situations involving large contractors. However, when the 97th Congress convenes, proponents of the original version of the Act have indicated that they will attempt to amend the Act to include large business firms within its provisions (these being similar to those originally approved by the House). So there may be further changes initiated by Congress to change the policy of the government in this area.

5.3.7.1 Use of Patented Inventions by or for the Government. In those cases where the government has authorized and consented to the use of a patented invention on its behalf, the owner of the patent cannot bring a suit for infringement against the contractor who is using the patent or to enjoin the contractor from using the patent. A suit for such infringement may be brought only against the government in the Court of Claims (under 28 USC 1498). Since the provisions of 28 USC 1498 require the authorization and consent of the government, the clause in either DAR (ASPR) 7-103.22 or 7-302.21 is used in all contracts unless the contract is to be performed outside the U.S.

If the owner of a patent does indeed sue the government for infringement and wins, the Court of Claims will award compensation to the owner of the patent. However, the government may be reimbursed by the infringing contractor for any damages awarded to the patent owner in accordance with any patent indemnity clause (if any) which is included by the contract. Except in those cases where patent indemnity clauses are not to be used (see DAR (ASPR) 9-103), an indemnity clause, as appropriate under the characteristics of the procurement, should be included in the contract. In no instance will a clause be included in any contract whereby the government agrees to indemnify a contractor against liability for patent infringement.

6. USE OF THIS REPORT

This report is intended to assist program managers in fulfilling their responsibilities relating to data management and in acquiring rights in data sufficient to support its intended use. Each manager must evaluate the contents of this report in light of his own particular situation. However, components of the report and suggestions as to their use are presented below.

1. General Taxonomy of Data, Section 3.2. This classification structure familiarizes the user of this report with the types of data that can arise from government contracts and with some of the circumstances which surround its submittal that are pertinent to determining rights in data. A legend to the structure is included to describe the meaning which attaches to terms used in the structure.

2. Special Taxonomy of Data and Data Rights, Section 3.3. The special taxonomy of data and data rights represents a dynamic structure easily adaptable to changes in policy and regulations. It conveys to the user a sense of the underlying logic which determines the relationship between data and data rights. The special taxonomy serves as a general guide and includes references to DAR (ASPR) clauses, which can be consulted for more in depth guidance.

3. Data and Data Rights Objectives, Policies, and Procedures, Section 4. The history of data management provides the user with a framework for analyzing current developments in DoD's data management program. A history of DoD's rights in data policy is also presented as well as a discussion of current issues relating to rights in technical data, software data, financial data, and administrative/management data. Current developments in government patent policy are also discussed in this section. Contract disputes relating to rights in data were analyzed and some of the recurring themes are presented to highlight potential problem areas and to give some idea as to the manner in which they have been resolved in the past.

4. Study Results and Recommendations, Section 5. Recommendations are made in those areas identified as pertinent to program management. Both data management and rights in data are addressed. These observations and recommendations must be assessed in light of each program office's particular circumstances.

5. Appendix A. This appendix includes pertinent DAR (ASPR) clauses. Many questions relating to rights in data can be resolved through use of Appendix A rather than requiring access to the full set of DAR (ASPR) regulations.

6. Dictionary. The dictionary familiarizes the user of this report with terms and acronyms relating to data management and rights in data. Each term/acronym is referenced.

APPENDIX A

This Appendix contains relevant clauses from the Defense Acquisition Regulation (DAR)/Armed Services Procurement Regulation (ASPR) that are referenced in the taxonomy development of Section 3 of this report.

3-507.1	Restrictions on Disclosure and Use of Data in Proposals or Quotations
4-913	Limited Use of Data
7-103.22	Authorization and Consent
7-104.9	Rights in Data and Computer Software
7-302.21	Authorization and Consent
7-302.23	Clauses for Domestic Contracts (Patent Rights)*
7-2003.61	Predetermination of Rights in Data
7-2003.76	Identification of Restricted Rights Computer Software

* The provisions of this clause will be modified by PL 96-517 (signed into law December 1980). DAR(ASPR) clauses do not yet reflect this new statutory guidance. See Section 4.1.4.

in 2-303.2, appropriately modified to relate to proposals and, if necessary, to telegraphic proposals.

(d) The normal revisions of proposals by offerors selected for discussion during the usual conduct of negotiations with such offerors are not to be considered as late proposals or late modifications to proposals.

(e) Late proposals and modifications of proposals which are not considered shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(f) The following shall, if available, be included in the purchase office files with respect to each late proposal or modification of proposal:

(i) the date of mailing, filing, or delivery, as the case may be;

(ii) the date and hour of receipt;

(iii) whether or not considered for award; and

(iv) the wrapper or other evidence if considered for award.

3-507 Treatment of Procurement Information.

3-507.1 *Restrictions on Disclosure and Use of Data in Proposals and Quotations.*

(a) A proposal, whether solicited or unsolicited, may include data, such as a technical design or concept or financial and management plan, which the offeror does not want disclosed to the public for any purpose or used by the Government for any purpose other than evaluation of the proposal. If an offeror wishes so to restrict his proposal, he shall mark the title page with the following legend:

> This data, furnished in connection with Request for Proposals No. .....*, shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal; *provided*, that if a contract is awarded to this offeror as a result of or in connection with the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction is contained in *Sheets* ..... ***(1966 DEC)***
>
> *If proposal is unsolicited (see 4-101(c)), delete "furnished in connection with Request for Proposals No....."

The offeror shall mark each sheet of data which he wishes to restrict with the following legend:

> Use or disclosure of proposal data is subject to the restriction on the Title page of this Proposal. **(1966 DEC)**

Contracting officers and other Government personnel shall not refuse to consider any proposal merely because it or the data submitted with it is so marked. Those portions of the proposal and data which are so marked (except for information which is also obtained from another source without restriction) shall be used only to evaluate the proposal and shall not be disclosed outside the Government without the written permission of the offeror. If it is desired to duplicate, use, or

disclose the data of the offeror to whom the contract is to be awarded, for purposes other than to evaluate the proposal, the contract should so provide. (See 9-201 for a description of "data" and Section IX, Part 2, in general, for the policy, instructions, and contract clauses with respect to the acquisition and use of data.)

(b) Proposals or quotations of subcontractors which are included as part of a proposal submitted by a prime-offeror may be marked as provided in (a) above.

(c) Records or data, other than the types of items listed in 1-329.1(b), bearing such a legend may be otherwise subject to release under the terms of the Freedom of Information Act, 5 U.S.C. 552, as amended (see 1-329). It is to be noted, however, that absent a request for such records or data pursuant to the statutory provisions, and the subsequent determination of releaseability, the legend shall be honored in accordance with (a) above.

(d) Proposals, solicited and unsolicited, shall be maintained and disposed of pursuant to 1-308 and related S2-102.1(x) and S2-501.

(e) See 4-913 for further provisions with respect to unsolicited proposals.

3-507.2 *Disclosure of Information During the Pre-Award or Pre-Acceptance Period.*

(a) *General.* After receipt of proposals or quotations, no information contained in any proposal or quotation or information regarding the number or identity of the offerors shall be made available to the public, or to anyone within the Government not having a legitimate interest therein, except in accordance with 3-508.

(b) *Equal Consideration and Information to All Prospective Contractors.* Discussions with prospective contractors regarding a potential procurement and the transmission of technical or other information shall be conducted only by the contracting officer, his superiors having contractual authority or others specifically authorized. Such personnel shall not furnish any information to a potential supplier which alone or together with other information may afford him an advantage over others. However, general information which would not be prejudicial to others may be furnished upon request *e.g.*, explanation of a particular contract clause or a particular condition of the schedule. When necessary to clarify ambiguities, or correct mistakes or omissions, an appropriate amendment to the solicitation shall be furnished in a timely manner to all to whom the solicitation has been furnished. See 3-505.

3-508 Information to Offerors.

3-508.1 *General.* Notice shall be provided offerors in accordance with 3-508.2 and 3-508.3 below. Such notice need not be given where disclosure may in some way prejudice the Government's interest or where the contract is:

(i) for subsistence;

(ii) negotiated pursuant to 10 U.S.C. 2304(A)(4), (5), or (6) (see 3-204, 3-205, or 3-206);

(iii) negotiated with a foreign supplier when only foreign sources of supplies or services have been solicited.

3-508.2 *Pre-Award Notice of Unacceptable Offers.*

(a) In any procurement in excess of $10,000 in which it appears that the period of evaluation of proposals is likely to exceed 30 days or in which a limited

4-913 Limited Use of Data.

(a) The submitter of an unsolicited proposal may mark it with a legend, such as that provided in 3-507.1(a), restricting the disclosure and use of data in the proposal. If a proposal is so marked, the terms of the legend shall be complied with.

(b) If the contracting officer receives an unsolicited proposal marked with a more restricted legend than that provided in 3-507.1(a), then he shall immediately return the proposal to the submitter with a letter stating that the proposal cannot be considered because it is impracticable for the Government to comply with the legend (and pointing out specifically why this is so), but that the proposal will be considered if it is resubmitted with a satisfactorily revised legend or with the legend provided in 3-507.1(a).

(c) Except as provided in paragraphs (d) or (e) below, the coordinating office (see 4-908) shall place a cover sheet on the proposal or the proposal shall be otherwise clearly marked as follows unless the offeror gives a clear written indication that he does not wish to impose any restrictions on the disclosure or use of the data contained in the proposal.

UNSOLICITED PROPOSAL
USE OF DATA LIMITED

All Government personnel handling this proposal shall exercise EXTREME CARE to insure that the information contained herein is NOT DISCLOSED outside the Government and is NOT DUPLICATED, USED, OR DISCLOSED in whole or in part for any purpose other than to evaluate the proposal, without the written permission of the offeror (except that if a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use).

This notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction.

This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for any disclosure or use of data contained in this proposal.

(d) If an unsolicited proposal is received without any restrictive legend from an educational or nonprofit organization or institution and it is necessary or appropriate to obtain an evaluation of the proposal outside the Government by leading scientists or other preeminent experts, to ascertain the merits of the proposal, a cover sheet shall be placed on the proposal or the proposal shall be clearly marked with the legend set forth in paragraph (c) above, modified by changing the first two words to read "*All Government and non-Government*" and by deleting the words "*is not disclosed outside the Government and*". A written agreement shall be obtained from any non-Government evaluator that the evaluator will not disclose information in the proposal outside the Government. If the proposal is received with the restrictive legend referred to in paragraph (a) of this 4-913, the modified cover sheet shall also be used and permission shall be obtained from the offeror, prior to release, for the release of the proposal for outside evaluation.

(e) If an unsolicited proposal is received from other than an educational or nonprofit organization or institution, irrespective of whether it contains a restrictive legend, and it is necessary or appropriate to obtain an evaluation of the

proposal by Government personnel outside the agency and/or by leading scientists or preeminent experts outside the Government, written permission shall be obtained from the offeror prior to release of the proposal for such evaluation. A cover sheet shall be placed on the proposal or the proposal shall be clearly marked with the notice set forth in paragraph (c) above or as modified in accordance with paragraph (d) above, if appropriate. A written agreement shall be obtained from any non-Government evaluator that the evaluator will not disclose information in the proposal outside the Government.

charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall—from the effective date of termination until the expiration of three years after final settlement under this contract—preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

(End of clause)

7-103.22 *Authorization and Consent.* In accordance with 9-102.1, insert the following clause.

AUTHORIZATION AND CONSENT (1964 MAR)

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(End of clause)

7-103.23 *Notice and Assistance Regarding Patent Infringement.* In accordance with 9-104, insert the following clause.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (1965 JAN)

The provisions of this clause shall be applicable only if the amount of this contract exceeds $10,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) This clause shall be included in all subcontracts.

(End of clause)

shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds two hundred and fifty dollars ($250)

(End of clause)

7-104.9 *Rights in Data and Computer Software.*

(a) *Basic Data Clause.* In accordance with 9-203 and 9-603, insert the following clause.

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (1979 MAR)

(a) *Definitions*

(1) *Technical Data* means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information and computer software documentation. *Technical data* does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

(2) *Computer* - a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on these data, or a device that operates on analog data by performing physical processes on the data.

(3) *Computer Software* - computer programs and computer data bases.

(4) *Computer Program* - a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

(5) *Computer Data Base* - a collection of data in a form capable of being processed and operated on by a computer.

(6) *Computer Software Documentation* - Technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) *Unlimited Rights* means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(8) *Limited Rights* means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for:

(i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure, or

(ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above.

(9) *Restricted Rights* apply only to computer software, and include, as a minimum, the right to:

(i) use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) copy computer programs for safekeeping (archives) or backup purposes;

(iv) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, any other specific rights not inconsistent therewith listed or described in this contract or described in a license or agreement made a part of this contract.

(b) *Government Rights.*

(1) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see (2)(ii) below);

(v) technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) technical data pertaining to end-items; components or processes, prepared or required to be delivered under this or any other Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, *e.g.*, specification control drawings, catalog sheets, envelope drawings, etc.);

(vii) manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes;

(viii) technical data or computer software which is in the public domain, or has been or is normally released or disclosed by the Contractor or subcontractor without restriction on further disclosure; and

(ix) technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined, on the basis of subparagraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights; and

(ii) unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in (b)(1)(i), (v), (vi), (vii), and (viii);

provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to (2)(i) and (ii) above are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below in which is inserted:

A. the number of the prime contract under which the technical data is to be delivered,

B. the name of the Contractor and any subcontractor by whom the technical data was generated, and

C. an explanation of the method used to identify limited rights data.

LIMITED RIGHTS LEGEND

Contract No. .....

Contractor: .....

Explanation of Limited Rights Data Identification Method Used

....

....

Those portions of this technical data indicated as limited rights data shall not, without the written permission of the above Contractor, be either (a) used, released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture or, in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for: (i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or (ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above. This legend, together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Restricted Rights*. The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights in (a)(9)(i) through iv. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure is subject to
restrictions stated in Contract No. .....
with .....*Name of Contractor*).....

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this para-

graph shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) Copyright

(1) In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights defined in (a)(7). With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights defined in (a)(8). With respect to computer software which the parties have agreed in accordance with (b)(3) will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the contractor fail, by the Government:

> This material may be reproduced by or for the U.S. Government pursuant to the copyright license under DAR clause 7-104.9(a)(date).

(d) *Removal of Unauthorized Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder, if:

(i) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings, or

(ii) the Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case the Government shall give written notice to the Contractor of the action taken.

(e) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) *Limitation on Charges for Data and Computer Software.* The Contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data or computer software on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data or computer software which the Government has a right to use and disclose to others, which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(g) *Acquisition of Data and Computer Software from Subcontractors.*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next-higher tier Contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

(b) *Notice of Certain Limited Rights.* The paragraph (h) set forth below may be added to the clause in (a) above in any contract in which the contracting officer desires notification of limited rights data (see 9-202.2(g)).

(h) (1) Unless the Schedule provides otherwise, and subject to (2) below, the Contractor will promptly notify the Contracting Officer in writing of the intended use by the Contractor or a subcontractor in performance of this contract of any item, component or process for which technical data would fall within paragraph (b)(2) above.

(2) Such notification is not required with respect to:

(i) standard commercial items which are manufactured by more than one source of supply; or

(ii) items, components or processes for which such notice was given pursuant to predetermination of rights in technical data in connection with this contract.

(3) Contracting Officer approval is not necessary under this clause for the Contractor to use the item, component or process in the performance of the contract. (1972 APR)

(c) *Technical Data Clause—Specific Acquisition.* In accordance with 9-203(c), insert the following clause.

RIGHTS IN TECHNICAL DATA—SPECIFIC ACQUISITION (1979 MAR)

(a) *Definition. Technical Data* means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) *Government Rights.* The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the technical data delivered by the Contractor to the Government under this contract.

(c) Copyright

(1) In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies of phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights defined in (a)(7). With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights defined in (a)(8). With respect to computer software which the parties have agreed, in accordance with (b)(3), will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the contractor fail, by the Government:

> This material may be reproduced by or for the U.S. Government pursuant to the copyright license under DAR clause 7-104.9(a)(date).

(d) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on Charges for Data.* The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data on ac-

count of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, which is in the public domain, which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(End of clause)

(d) *Deferred Delivery of Technical Data or Computer Software.* In accordance with 9-502(b), insert the following clause.

DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (1974 NOV)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, the delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

(e) Production of Special Works. In accordance with 9-204.2, insert the following clause:

RIGHTS IN DATA-SPECIAL WORKS (1979 MAR)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, cost analyses, and other information incidential to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code, and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claim to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such works delivered under this contract the following notice:

© (Year date of delivery) United States Government as represented by the Secretary of (department). All rights reserved.

In the case of a phonorecord, the © will be replaced by Ⓟ.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (i) to reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the performance of this contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under this contract, and (ii) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (ii) based upon any libelous or other unlawful matter contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license of other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *provided,* such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

(f) *Purchase of Existing Motion Pictures or Television Recordings.* **In accordance with 9-205.2, insert the following clause:**

RIGHTS IN DATA-EXISTING WORKS (1979 MAR)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomines and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a non-exclusive, paid-up license throughout the world (i) to distribute, perform publicly, and display publicly the works called for under this contract and (ii) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (ii) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

(g) *Contracts To Be Performed Outside the United States.* In accordance with 9-206, insert the following clause.

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (FOREIGN) (1975 JUN)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

(h) *Technical Data—Withholding of Payment.* In accordance with 9-504, insert the following clause:

TECHNICAL DATA—WITHHOLDING OF PAYMENT (1976 JUL)

(a) If "Technical Data" (as defined in the clause of this contract entitled "Rights in Technical Data and Computer Software"), or any part thereof, specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) After payments total ninety percent (90%) of the total contract price or amount and if all technical data specified to be delivered under this contract has not been accepted, the Contracting Officer may, withhold from further payment such sum as he considers appropriate, not exceeding ten percent (10%) of the total contract price or amount unless a lesser withholding limit is specified in the contract.

(c) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

(i) The following additional paragraph may be added to the clause in (a) above in accordance with 9-204.1.

( ) Publication for Sale. If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than 24 months after delivery of such data, the Contractor publishes for sale any data (i) designated in the contract as being subject to this paragraph and (ii) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this Contract and recognizing the license rights of the Government under paragraph (c)(1) of this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

(j) *Identification of Experimental, Developmental or Research Work.* In accordance with 9-203(d), to prevent any misinterpretation of the scope of the rights in data provisions of the contract, the following schedule provision may be included in contracts which, in whole or in part, call for experimental, developmental or research work as an element of performance.

CONTRACT SCHEDULE ITEMS REQUIRING EXPERIMENTAL, DEVELOPMENTAL OR RESEARCH WORK (1975 MAR)

For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the "Rights in Technical Data and Computer Software" clause of this contract, it is understood and agreed that items (*list applicable schedule line items or sub-line items, or data exhibit numbers*) require the performance of experimental, developmental, or research work. This clause does not constitute a determination as to whether or not any data required to be delivered under this contract falls within the definition of limited rights data.

(End of provision)

(k) *Rights in Technical Data—Major Systems and Subsystems Contracts.* In accordance with 9-202.2(f)(4), the following clause may be inserted.

RIGHTS IN TECHNICAL DATA—MAJOR SYSTEM AND SUBSYSTEM CONTRACTS (1971 NOV)

The Contractor agrees that he will neither incorporate any provision in his subcontracts nor enter into any agreement, written or oral, either directly or indirectly, with subcontractors which has or may have the effect of prohibiting subcontractor sales directly to the Government of any supplies, like those manufactured or services like those furnished by such subcontractor under this contract or any follow-on production contract, or under any contract for parts or components of supplies furnished under this or any follow-on production contract. The Contractor further agrees that all data, including data in which the Government may not have unlimited rights, furnished or otherwise made available by the Contractor for use by subcontractors in furnishing such supplies or services, will be furnished to such subcontractors without payment to the Contractor of any fee, royalty or other charge by the subcontractor or the Government for use by such subcontractors in furnishing such supplies or services for sale directly to the Government. For the purpose of this paragraph, the term "fee, royalty or other charge" shall not include within its meaning fees, royalties or charges for reasonable returns on use of patents.

(End of clause)

(l) *Identification of Technical Data.* In accordance with 9-503, insert the following clause.

IDENTIFICATION OF TECHNICAL DATA (1975 MAR)

Technical Data (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

(m) *Deferred Ordering of Technical Data or Computer Software.* In accordance with 9-502(c), insert the following clause:

DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (1974 NOV)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) generated in the performance of this contract or any subcontract hereunder. When such technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver such technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

(n) *Requirements for Data.*

(1) The following clause shall be inserted in all contracts, except as provided in (2) below:

DATA REQUIREMENTS (1972 APR)

(a) Data means recorded information, regardless of form or characteristics.

(b) The Contractor is required to deliver only the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of Section VII of the Armed Services Procurement Regulation (ASPR) made a part of the contract.

(End of clause)

(2) The clause in (1) above need not be included in:

(i) any contract, of which the aggregate amount involved does not exceed $10,000 and in any blanket purchase agreement and purchase order utilizing the DD Form 1155; (However, the DD Form 1423 shall be used with orders issued under a basic ordering agreement.);

(ii) any contract awarded to a contractor outside the United States, except those under 6-501;

(iii) any research or exploratory development contract when reports are the only deliverable item(s) under the contract;

(iv) any service type contract, when the Contracting Officer determines that the use of the DD Form 1423 (Contract Data Requirements List) is impractical for use with respect to records prepared by a contractor in performing operation and maintenance under the contract;

(v) any contract under which construction and architectural drawings and specifications are the only deliverable items;

(vi) any contract for standard commercial items when the only deliverable technical data would be packaged or furnished with such items in accordance with customary trade practices; or

(vii) any contract for items containing material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life and property, when the only deliverable data is the Material Safety Data Sheet (MSDS) submitted in compliance with Federal Standard 313A and the clause in 7-104.98, and when such clause is included in the contract.

(o) *Technical Data Warranty.*

(1) In accordance with 1-324.6, the following clause may be inserted.

WARRANTY OF TECHNICAL DATA (1974 NOV)

(a) Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract and notwithstanding any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three (3) years after completion of the delivery of the line item of data (as identified in DD Form 1423) of which the data forms a part; or any longer period specified in the contract.

(c) The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) The following remedies shall apply to all breaches of the above warranty *provided* that the Government notifies the Contractor of the breach in writing within the warranty period.

(1) Within a reasonable time after the Contracting Officer notifies the Contractor of a breach of warranty, he may:

(i) by written notice, direct the Contractor to correct or replace at his expense the nonconforming technical data promptly; or

(ii) if he determines that the Government no longer has a requirement for correction or replacement of the data or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment in lieu of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under (1)(i) above, the Contracting Officer may, within a reasonable time of such refusal or failure:

(i) by contract or otherwise, correct or replace the nonconforming technical data and charge the Contractor the cost occasioned to the Government thereby; or

(ii) elect a price or fee adjustment in lieu of correction or replacement.

(e) The remedies set forth in this clause represent the exclusive means by which the rights conferred on the Government by this clause may be enforced.

(f) The provisions of this clause apply anew to that portion of any technical data which is corrected or furnished in replacement under (d)(1)(i) above.

(End of clause)

(2) In accordance with 1-324.6(b), the following provision may be inserted in firm fixed-price contracts as paragraph (d)(3) of the Warranty of Technical Data clause set forth above.

(3) In addition to the remedies specified under (1) and (2) above, the Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 10% of the total contract price. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. The additional liability specified in this paragraph (3) shall not apply:

(i) with respect to the requirement under Category E or I of MIL-D-1000, *provided* that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

(3) In accordance with 1-324.6(b), the following provision may be inserted in fixed-price-incentive contracts as paragraph (d)(3) of the Warranty of Technical Data clause in 7-104.9(o).

(3) In addition to the remedies specified under (d)(1) and (2) above, Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 75% of the target profit. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. Damages due the Government under the provisions of this warranty shall not be considered as an allowable cost. The additional liability specified in this paragraph (3) shall not apply:

(i) with respect to the requirement under Category E or I of MIL-D-1000, *provided* that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

(p) *Restrictive Markings on Technical Data.* In accordance with 9-202.3(c)(2), insert the following clause.

RESTRICTIVE MARKINGS ON TECHNICAL DATA (1975 MAR)

(a) The Contractor shall have, maintain, and follow throughout the performance of this contract, procedures sufficient to assure that restrictive markings are used on technical data required to be delivered hereunder only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. Such procedures shall be in writing. The Contractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall maintain (1) records to show how the procedures of (a) above were applied in determining that the markings are authorized, as well as (2) such records as are reasonably necessary to show pursuant to (d)(ii) of the "Rights in Technical Data and Computer Software" clause that restrictive markings used in any piece of technical data delivered under this contract are authorized.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Contractor hereby authorizes direct contact between the Government and such person(s) in resolving questions involving restrictive markings.

(d) The Contracting Officer may evaluate or verify the Contractor's procedures to determine their effectiveness. Upon request, a copy of such written procedures shall be furnished. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with (a) and (b) above.

(e)(1) If the Contractor fails to make a good faith effort to institute the procedures of (a) and (b) above, any limited rights markings on technical data delivered under this contract may be canceled or ignored by the Contracting Officer. The Contracting Officer shall give written notice to the Contractor of the action taken, including identification of the data on which markings have been canceled or ignored, and thereafter may use such data with unlimited rights.

(2) The Contracting Officer may give written notification to the Contractor of any failure to maintain or follow the established procedures, or of any material deficiency in the procedures, and state a period of time not less than thirty (30) days within which the Contractor shall complete corrective action. If corrective action is not completed within the specified time, restrictive markings on any technical data being prepared for delivery or delivered under this contract during that period shall be presumed to be unauthorized by the terms thereof and the Contracting Officer may cancel or ignore such markings if the Contractor is unable to substantiate the markings in accordance with the procedures of paragraph (d) of the "Rights in Technical Data and Computer Software" clause.

(f) Notwithstanding any provisions of this contract concerning inspection and acceptance, the acceptance by the Government of technical data with restrictive legends shall not be construed as a waiver of any rights accruing to the Government.

(g) This clause, including this paragraph (g), shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

7-104.10 *Ground and Flight Risk.* In accordance with 10-404, insert the following clause.

GROUND AND FLIGHT RISK (1975 OCT)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft "in the open", during "operation", and in "flight", as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means—

(A) aircraft (including (I) complete aircraft, and (II) aircarft in the course of being manufactured, disassembled, or reassembled; *provided*, that an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government); and

(B) aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract,

including all property installed therein, or in the process of installation, or temporarily removed from such aircraft; *provided*, however, that such aircraft and property are not covered by a separate bailment agreement.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-302.13 *Buy American Act.* In accordance with 7-104.3, insert the clause therein. When the contract involves construction work, in accordance with 7-602.20 and 7-602.24 also insert the clauses therein.

7-302.14 *Convict Labor.* In accordance with 12-203, insert the clause in 7-104.17.

7-302.15 *Walsh-Healey Public Contracts Act.* In accordance with Section XII, Part 6, insert the clause in 7-103.17.

7-302.16 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-302.17 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-302.18 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-302.19 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-302.20 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-302.21 *Authorization and Consent.* In accordance with 9-102, insert the following clause or the clause in 7-103.22 as appropriate.

AUTHORIZATION AND CONSENT (1961 JAN)

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

(End of clause)

7-302.22 *Notice and Assistance Regarding Patent Infringement.* In accordance with 9-104, insert the clause in 7-103.23.

7-302.23 *Clauses for Domestic Contracts.*

(a) *Patent Rights clause - Acquisition by the Government (Long Form).* When a contract is determined to fall within 9-107.3(a)(2), the following clause shall be included in the contract.

PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (LONG FORM) (1977 AUG)

(a) *Definitions.*

(1) "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(2) "*Contract*" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.

(3) "*States and domestic municipal governments*" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(4) "*Government agency*" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(5) "*To bring to the point of practical application*" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(b) *Allocation of principal rights.*

(1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Contractor under paragraphs (b)(2) and (d) of this clause.

(2) *Greater Rights Determinations.* The Contractor, or the employee-inventor with authorization of the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of ASPR 9-109.6 A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (e)(2)(i) of this clause, or not later than three (3) months thereafter, or such longer period as may be authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in ASPR 9-109.6(a). Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause and to the reservations and conditions deemed to be appropriate by the Contracting Officer.

(c) *Minimum rights acquired by the Government.* With respect to each Subject Invention to which the Contractor retains principal or exclusive rights, the Contractor:

(i) hereby grants to the Government a nonexclusive, nontransferable, paid-up license to make, use, and sell each Subject Invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and the States and domestic municipal governments;

(ii) agrees to grant to responsible applicants, upon request of the Government, a license on terms that are reasonable under the circumstances;

(A) unless the Contractor, his licensee, or his assignee, demonstrates to the Government that effective steps have been taken within three (3) years after a patent issues on such invention to bring the invention to the point of practical application or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time; or

(B) to the extent that the invention is required for public use by governmental regulations or as may be necessary to fulfill public health, welfare or safety needs, or for other public purposes stipulated in this contract;

(iii) shall submit written reports at reasonable intervals, upon request of the Government, during the term of the patent on the Subject Invention, regarding:

(A) the commercial use that is being made or is intended to be made of such invention; and

(B) the steps taken by the Contractor or his transferee to bring the invention to the point of practical application, or to make the invention available for licensing;

(iv) agrees to arrange, when licensing any subject inventions, to avoid royalty charges on procurements involving Government funds, including funds derived through the Military Assistance Program of the Government or otherwise derived through the Government, and to refund any amounts received as royalty charges on any Subject Invention in procurements for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in such invention to any party; and

(v) agrees to provide for the Government's paid-up license pursuant to paragraph (c)(i) of this clause in any instrument transferring rights in a Subject Invention and to provide for the granting of licenses as required by (c)(ii) of this clause, and for the reporting of utilization information as required by paragraph (c)(iii) of this clause whenever the instrument transfers principal or exclusive rights in any Subject Invention.

Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a Subject Invention.

(d) *Minimum rights to the Contractor.*

(1) The Contractor reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the Contractor's domestic subsidiaries and

affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of the Contracting Officer, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic nonexclusive license retained pursuant to paragraph (d)(1) of this clause may be revoked or modified to the extent necessary to achieve expeditious practical application of the Subject Invention. The license shall not be revoked in that field of use and/or the geographical areas in which the contractor has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public. The Contractor's nonexclusive license in any foreign country reserved pursuant to paragraph (d)(1) of this clause may be revoked or modified at the discretion of the Contracting Officer to the extent the Contractor or his domestic subsidiaries or affiliates have failed to achieve the practical application of the invention in such foreign country.

(3) Before modification or revocation of the license, pursuant to paragraph (d)(2) of this clause, the Contractor shall be given written notice of the intent to modify or revoke the license and shall be allowed thirty (30) days or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor after such notice to show cause why the license should not be modified or revoked. The Contractor shall have the right to contest any decision concerning the modification or revocation of the license in accordance with Departmental inventions licensing regulations.

(e) *Invention identification, disclosures and reports.*

(1) The Contractor shall establish and maintain active and effective procedures to assure that Subject Inventions are promptly identified and timely disclosed. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures so that he may evaluate and determine their effectiveness.

(2) The Contractor shall furnish the Contracting Officer:

(i) a complete technical disclosure for each Subject Invention, within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor(s) and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) interim reports, preferably on DD Form 882, at least every twelve (12) months from the date of the contract listing Subject Inventions during that period and certifying that:

(A) the Contractor's procedures for identifying and disclosing Subject Inventions as required by this paragraph (e) have been followed throughout the reporting period; and

(B) all Subject Inventions have been disclosed or that there are no such inventions; and

(iii) a final report, preferably on DD Form 882, within three (3) months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except nontechnical personnel, such as clerical and manual labor personnel.

(4) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Forfeiture of rights in unreported Subject Inventions.*

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within six (6) months after the time he:

(i) files or causes to be filed a United States or foreign application thereon, or

(ii) submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (f), the Contractor:

(i) prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or

(ii) contending that the invention is not a Subject Invention, he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer; or

(iii) establishes that the failure to disclose did not result from his fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes clause), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(g) *Examination of records relating to inventions.*

(1) The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to:

(i) establish the procedures of paragraph (e)(1) of this clause; or

(ii) maintain and follow such procedures; or

(iii) correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(h) *Withholding of payment (not applicable to subcontracts).*

(1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50,000 or five percent (5%) of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Contractor fails to:

(i) establish, maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or

(iii) deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause.

Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, an acceptable final report pursuant to (e)(2)(iii) of this clause and all past due confirmatory instruments.

(3) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or one percent (1%) of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of

the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) *Subcontracts.*

(1) For the purpose of this paragraph, the term "*Contractor*" means the party awarding a subcontract and the term "*Subcontractor*" means the party being awarded a subcontract, regardless of tier.

(2) The Contractor shall include an ASPR patent rights clause determined by the Contractor to be in accordance with the policy expressed in ASPR 9-107.2 in every subcontract hereunder having as a purpose the conduct of experimental, developmental, or research work, unless the Contractor is directed by the Government Contracting Officer to include a particular clause. In the event of refusal by a subcontractor to accept such clause, the Contractor:

(i) shall promptly submit a written notice to the Government Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter; and

(ii) shall not proceed with the subcontract without the written authorization of the Government Contracting Officer.

(3) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his subcontractor's Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract).

(4) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to the Government Contracting Officer under the provisions of a patent rights clause in any subcontract hereunder may, in the discretion of the Government Contracting Officer, be furnished to the Contractor for transmission to the Government Contracting Officer.

(5) The Contractor shall promptly notify the Government Contracting Officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Government Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts containing patent rights clauses, a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause.

(6) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government Contracting Officer promptly upon the identification of the inventions.

(7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns to the Government all rights that he would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(End of clause)

(b) *Patent Rights Clause - Retention by the Contractor (Long Form).* When a contract is determined to fall within 9-107.3(a)(3), the following clause shall be included in the contract.

PATENT RIGHTS - RETENTION BY THE CONTRACTOR (LONG FORM) (1977 AUG)

(a) *Definitions.*

(1) "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(2) "*Contract*" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.

(3) "*States and domestic municipal governments*" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(4) "*Government agency*" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(5) "*To bring to the point of practical application*" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(b) *Allocation of principal rights.*

(1) The Contractor may retain the entire right, title, and interest throughout the world or any country thereof in and to each Subject Invention disclosed pursuant to paragraph (e)(2)(i) of this clause, subject to the rights obtained by the Government in paragraph (c) of this clause. The Contractor shall include with each Subject Invention disclosure an election as to whether he will retain the entire right, title, and interest in the invention throughout the world or any country thereof.

(2) Subject to the license specified in paragraph (d) of this clause, the Contractor agrees to convey to the Government, upon request, the entire domestic right, title, and interest in any Subject Invention when the Contractor:

(i) does not elect under paragraph (b)(1) of this clause to retain such rights; or

(ii) fails to have a United States patent application filed on the invention in accordance with paragraph (j) of this clause, or decides not to continue prosecution of such application; or

(iii) at any time, no longer desires to retain title.

(3) Subject to the license specified in paragraph (d) of this clause, the Contractor agrees to convey to the Government, upon request, the entire, right, title, and interest in any Subject Invention in any foreign country when the Contractor:

(i) does not elect under paragraph (b)(1) of this clause to retain such rights in the country; or

(ii) fails to have a patent application filed in the country on the invention in accordance with paragraph (k) of this clause, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Contractor shall notify the Contracting Officer not less than sixty (60) days before the expiration period for any action required by the foreign patent office.

(4) A conveyance, requested pursuant to paragraph (b)(2) or (3) of this clause, shall be made by delivering to the Contracting Officer duly executed instruments (prepared by the Government) and such other papers as are deemed necessary to vest in the Government the entire right, title and interest to enable the Government to apply for and prosecute patent applications covering the invention in this or the foreign country, respectively, or otherwise establish its ownership of such invention.

(c) *Minimum rights acquired by the Government.* With respect to each Subject Invention to which the Contractor retains principal or exclusive rights, the Contractor:

(i) hereby grants to the Government a nonexclusive, nontransferable, paid-up license to make, use, and sell each Subject Invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and the States and domestic municipal governments;

(ii) agrees to grant to responsible applicants, upon request of the Government, a license on terms that are reasonable under the circumstances;

(A) unless the Contractor, his licensee, or his assignee, demonstrates to the Government that effective steps have been taken within three (3) years after a patent issues on such invention to bring the invention to the point of practical application or that the invention has been made available for licensing royalty-free or on

terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time; or

(B) to the extent that the invention is required for public use by governmental regulations or as may be necessary to fulfill public health, welfare or safety needs, or for other public purposes stipulated in this contract;

(iii) shall submit written reports at reasonable intervals, upon request of the Government, during the term of the patent on the Subject Invention, regarding:

(A) the commercial use that is being made or is intended to be made of such invention; and

(B) the steps taken by the Contractor or his transferee to bring the invention to the point of practical application, or to make the invention available for licensing;

(iv) agrees to arrange, when licensing any subject inventions, to avoid royalty charges on procurements involving Government funds, including funds derived through the Military Assistance Program of the Government or otherwise derived through the Government, and to refund any amounts received as royalty charges on any Subject Invention in procurements for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in such invention to any party; and

(v) agrees to provide for the Government's paid-up license pursuant to paragraph (c)(i) of this clause in any instrument transferring rights in a Subject Invention and to provide for the granting of licenses as required by (c)(ii) of this clause, and for the reporting of utilization information as required by paragraph (c)(iii) of this clause whenever the instrument transfers principal or exclusive rights in any Subject Invention.

Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a Subject Invention.

(d) *Minimum rights to the Contractor.*

(1) The Contractor reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of the Contracting Officer, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic nonexclusive license retained pursuant to paragraph (d)(1) of this clause may be revoked or modified to the extent necessary to achieve expeditious practical application of the Subject Invention. The license shall not be revoked in that field of use and/or the geographical areas in which the contractor has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public. The Contractor's nonexclusive license in any foreign country reserved pursuant to paragraph (d)(1) of this clause may be revoked or modified at the discretion of the Contracting Officer to the extent the Contractor or his domestic subsidiaries or affiliates have failed to achieve the practical application of the invention in such foreign country.

(3) Before modification or revocation of the license, pursuant to paragraph (d)(2) of this clause, the Contractor shall be given written notice of the intent to modify or revoke the license and shall be allowed thirty (30) days or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor after such notice to show cause why the license should not be modified or revoked. The Contractor shall have the right to contest any decision concerning the modification or revocation of the license in accordance with Departmental inventions licensing regulations.

(e) *Invention identification, disclosures and reports.*

(1) The Contractor shall establish and maintain active and effective procedures to assure that Subject Inventions are promptly identified and timely disclosed. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures so that he may evaluate and determine their effectiveness.

7-302.23

ARMED SERVICES PROCUREMENT REGULATION

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(2) The Contractor shall furnish the Contracting Officer

(i) a complete technical disclosure for each Subject Invention, within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor(s) and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention,

(ii) interim reports, preferably on DD Form 882, at least every twelve (12) months from the date of the contract listing Subject Inventions during that period and certifying that:

(A) the Contractor's procedures for identifying and disclosing Subject Inventions as required by this paragraph (e) have been followed throughout the reporting period; and

(B) all Subject Inventions have been disclosed or that there are no such inventions; and

(iii) a final report, preferably on DD Form 882, within three (3) months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except non-technical personnel, such as clerical and manual labor personnel.

(4) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Forfeiture of rights in unreported Subject Inventions.*

(1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within six (6) months after the time he:

(i) files or causes to be filed a United States or foreign application thereon, or

(ii) submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (f), the Contractor:

(i) prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract, or

(ii) contending that the invention is not a Subject Invention, he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer, or

(iii) establishes that the failure to disclose did not result from his fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes clause), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(g) *Examination of records relating to inventions.*

(1) The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to

(i) establish the procedures of paragraph (e)(1) of this clause; or

(ii) maintain and follow such procedures; or

(iii) correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(h) *Withholding of payment (not applicable to subcontracts).*

(1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50,000 or five percent (5%) of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Contractor fails to:

(i) establish, maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or

(iii) deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause.

Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, an acceptable final report pursuant to (e)(2)(iii) of this clause and all past due confirmatory instruments.

(3) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or one percent (1%) of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) *Subcontracts.*

(1) For the purpose of this paragraph, the term "*Contractor*" means the party awarding a subcontract and the term "*Subcontractor*" means the party being awarded a subcontract, regardless of tier.

(2) The Contractor shall include an ASPR patent rights clause determined by the Contractor to be in accordance with the policy expressed in ASPR 9-107.2 in every subcontract hereunder having as a purpose the conduct of experimental, developmental, or research work, unless the Contractor is directed by the Government Contracting Officer to include a particular clause. In the event of refusal by a subcontractor to accept such clause, the Contractor:

(i) shall promptly submit a written notice to the Government Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter; and

(ii) shall not proceed with the subcontract without the written authorization of the Government Contracting Officer.

(3) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his subcontractor's Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract).

(4) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to the Government Contracting Officer under the provisions of a patent rights clause in any subcontract hereunder may, in the discretion of the Government Contracting Officer, be furnished to the Contractor for transmission to the Government Contracting Officer.

(5) The Contractor shall promptly notify the Government Contracting Officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Government Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts contain-

ing patent rights clauses, a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause

(6) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government Contracting Officer promptly upon the identification of the inventions

(7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns to the Government all rights that he would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligation of the subcontractor to the Government in regard to Subject Inventions

(j) *Filing of domestic patent applications*

(1) With respect to each Subject Invention in which the Contractor elects to retain domestic rights pursuant to paragraph (b) of this clause, the Contractor shall have a domestic patent application filed within six (6) months after submission of the invention disclosure pursuant to paragraph (e)(2)(i) of this clause, or such longer period as may be approved in writing by the Contracting Officer for good cause shown in writing by the Contractor With respect to such invention, the Contractor shall promptly notify the Contracting Officer of any decision not to file an application.

(2) For each Subject Invention on which a patent application is filed by or on behalf of the Contractor, the Contractor shall

(i) within two (2) months after such filing, or within two (2) months after submission of the invention disclosure if the patent application previously has been filed, deliver to the Contracting Officer a copy of the application as filed, including the filing date and serial number,

(ii) include the following statement in the second paragraph of the specification of the application and any patents issued on the Subject Invention, "The Government has rights in this invention pursuant to Contract (or Grant) No. ..... awarded by (*identify the Department*)";

(iii) within six (6) months after filing the application, or within (6) months after submitting the invention disclosure if the application has been filed previously, deliver to the Contracting Officer a duly executed and approved instrument on the form specified in ASPR 9-109.5(b) fully confirmatory of all rights to which the Government is entitled, and provide the Government an irrevocable power to inspect and make copies of the patent application file;

(iv) provide the Contracting Officer with a copy of the patent within two (2) months after a patent issues on the application; and

(v) not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Contracting Officer of any decision not to continue prosecution of the application and deliver to the Contracting Officer executed instruments granting the Government a power of attorney.

(3) For each Subject Invention in which the Contractor initially elects not to retain principal domestic rights, the Contractor shall inform the Contracting Officer promptly in writing of the date and identity of any on sale, public use, or publication of such invention which may constitute a statutory bar under 35 U.S.C. 102, which was authorized by or known to the Contractor, or any contemplated action of this nature.

(k) *Filing of foreign patent applications.*

(1) With respect to each Subject Invention in which the Contractor elects to retain principal rights in a foreign country pursuant to paragraph (b)(1) of this clause, the Contractor shall have a patent application filed on the invention in such country, in accordance with applicable statutes and regulations, and within one of the following periods:

(i) eight (8) months from the date of a corresponding United States application filed by or on behalf of the Contractor; or if such an application is not filed, six (6) months from the date the invention is submitted in a disclosure pursuant to paragraph (e)(2)(i) of this clause;

(ii) six (6) months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign applications when such filing has been prohibited by security reasons; or

(iii) such longer period as may be approved in writing by the Contracting Officer

(2) The Contractor shall notify the Contracting Officer promptly of each foreign application filed and, upon written request, shall furnish an English version of such foreign application without additional compensation.

(End of clause)

(c) *Patent Rights Clause - Deferred (Long Form).* When a contract is determined to fall within 9-107.3(a)(4), the following clause shall be included in the contract.

PATENT RIGHTS - DEFERRED (LONG FORM) (1977 AUG)

(a) *Definitions.*

(1) "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(2) "*Contract*" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.

(3) "*States and domestic municipal governments*" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(4) "*Government agency*" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(5) "*To bring to the point of practical application*" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(b) *Allocation of principal rights.*

(1) *Assignment to the Government.* After a Subject Invention is identified, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to the Subject Invention except to the extent that greater rights are retained under paragraphs (b)(2) and (d) of this clause.

(2) *Greater Rights Determinations.* The Contractor, or the employee-inventor with authorization of the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of ASPR 9-109.6. A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (e)(2)(i) of this clause, or not later than three (3) months thereafter, or such longer period as may be authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in ASPR 9-109.6(a). Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause and to the reservations and conditions deemed to be appropriate by the Contracting Officer.

(c) *Minimum rights acquired by the Government.* With respect to each Subject Invention to which the Contractor retains principal or exclusive rights, the Contractor:

(i) hereby grants to the Government a nonexclusive, nontransferable, paid-up license to make, use, and sell each Subject Invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and the States and domestic municipal governments;

(ii) agrees to grant to responsible applicants, upon request of the Government, a license on terms that are reasonable under the circumstances;

(A) unless the Contractor, his licensee, or his assignee, demonstrates to the Government that effective steps have been taken within three (3) years after a patent issues on such invention to bring the invention to the point of practical application or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time; or

(B) to the extent that the invention is required for public use by governmental regulations or as may be necessary to fulfill public health, welfare or safety needs, or for other public purposes stipulated in this contract,

(iii) shall submit written reports at reasonable intervals, upon request of the Government, during the term of the patent on the Subject Invention, regarding:

(A) the commercial use that is being made or is intended to be made of such invention; and

(B) the steps taken by the Contractor or his transferee to bring the invention to the point of practical application, or to make the invention available for licensing;

(iv) agrees to arrange, when licensing any subject inventions, to avoid royalty charges on procurements involving Government funds, including funds derived through the Military Assistance Program of the Government or otherwise derived through the Government, and to refund any amounts received as royalty charges on any Subject Invention in procurements for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in such invention to any party; and

(v) agrees to provide for the Government's paid-up license pursuant to paragraph (c)(i) of this clause in any instrument transferring rights in a Subject Invention and to provide for the granting of licenses as required by (c)(ii) of this clause, and for the reporting of utilization information as required by paragraph (c)(iii) of this clause whenever the instrument transfers principal or exclusive rights in any Subject Invention.

Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a Subject Invention.

(d) *Minimum rights to the Contractor.*

(1) The Contractor reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of the Contracting Officer, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic nonexclusive license retained pursuant to paragraph (d)(1) of this clause may be revoked or modified to the extent necessary to achieve expeditious practical application of the Subject Invention. The license shall not be revoked in that field of use and/or the geographical areas in which the contractor has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public. The Contractor's nonexclusive license in any foreign country reserved pursuant to paragraph (d)(1) of this clause may be revoked or modified at the discretion of the Contracting Officer to the extent the Contractor or his domestic subsidieries or affiliates have failed to achieve the practical application of the invention in such foreign country.

(3) Before modification or revocation of the license, pursuant to paragraph (d)(2) of this clause, the Contractor shall be given written notice of the intent to modify or revoke the license and shall be allowed thirty (30) days or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor after such notice to show cause why the license should not be modified or revoked. The Contractor shall have the right to contest any decision concerning the modification or revocation of the license in accordance with Departmental inventions licensing regulations.

(e) *Invention identification, disclosures and reports.*

(1) The Contractor shall establish and maintain active and effective procedures to assure that Subject Inventions are promptly identified and timely disclosed. These procedures shall in-

clude the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures so that he may evaluate and determine their effectiveness.

(2) The Contractor shall furnish the Contracting Officer:

(i) a complete technical disclosure for each Subject Invention, within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor(s) and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) interim reports, preferably on DD Form 882, at least every twelve (12) months from the date of the contract listing Subject Inventions during that period and certifying that:

(A) the Contractor's procedures for identifying and disclosing Subject Inventions as required by this paragraph (e) have been followed throughout the reporting period; and

(B) all Subject Inventions have been disclosed or that there are no such inventions; and

(iii) a final report, preferably on DD Form 882, within three (3) months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except non-technical personnel, such as clerical and manual labor personnel.

(4) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Forfeiture of rights in unreported Subject Inventions.*

(1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within six (6) months after the time he:

(i) files or causes to be filed a United States or foreign application thereon, or

(ii) submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (f), the Contractor:

(i) prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or

(ii) contending that the invention is not a Subject Invention, he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer; or

(iii) establishes that the failure to disclose did not result from his fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes clause), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(g) *Examination of records relating to inventions.*

(1) The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.

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(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to:

(i) establish the procedures of paragraph (e)(1) of this clause; or

(ii) maintain and follow such procedures; or

(iii) correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(h) *Withholding of payment (not applicable to subcontracts).*

(1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50,000 or five percent (5%) of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Contractor fails to:

(i) establish, maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause, or

(iii) deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause.

Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, an acceptable final report pursuant to (e)(2)(iii) of this clause and all past due confirmatory instruments.

(3) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or one percent (1%) of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) *Subcontracts.*

(1) For the purpose of this paragraph, the term "*Contractor*" means the party awarding a subcontract and the term "*Subcontractor*" means the party being awarded a subcontract, regardless of tier.

(2) The Contractor shall include an ASPR patent rights clause determined by the Contractor to be in accordance with the policy expressed in ASPR 9-107.2 in every subcontract hereunder having as a purpose the conduct of experimental, developmental, or research work, unless the Contractor is directed by the Government Contracting Officer to include a particular clause In the event of refusal by a subcontractor to accept such clause, the Contractor.

(i) shall promptly submit a written notice to the Government Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter, and

(ii) shall not proceed with the subcontract without the written authorization of the Government Contracting Officer.

(3) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his subcontractor's Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract)

(4) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to the Government Contracting Officer under the provisions of a patent rights clause in any subcontract hereunder may, in the discretion of the Government Contracting Officer, be furnished to the Contractor for transmission to the Government Contracting Officer.

(5) The Contractor shall promptly notify the Government Contracting Officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Government Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts containing patent rights clauses, a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause.

(6) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government Contracting Officer promptly upon the identification of the inventions.

(7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns to the Government all rights that he would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(End of clause)

(d) *Reserved.*

(e) *Contracts relating to Atomic Energy.* Add the following paragraph to the applicable patent rights clause. (See 9-107.7.)

In addition to the foregoing provisions, the Contractor agrees:

(i) to identify and call to the attention of the Contracting Officer each Subject Invention made by employees of the Contractor (except clerical and manual labor personnel who do not have access to technical data) and which relates to the production or utilization of special nuclear material or atomic energy within the purview of the Atomic Energy Act of 1954 (42 U.S.C. 2011-2296);

(ii) to furnish through the Contracting Officer to the Energy Research and Development Administration (ERDA) the required disclosure regarding each Subject Invention under (i) of this paragraph;

(iii) ERDA shall have the sole and conclusive power to determine whether and where a patent application relating to a Subject Invention under (i) of this paragraph shall be filed, and to determine the disposition of the title to and rights under any such application or any patent that may issue thereon;

(iv) to obtain the execution of and delivery to ERDA of all required documents relating to each Subject Invention under (i) of this paragraph and to do all other things requested, necessary, or proper to carry out any determination of ERDA made under (iii) of this paragraph; and

(v) unless otherwise authorized in writing by the Contracting Officer to include this paragraph in the Patent Rights clause of all subcontracts.

No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954 shall be asserted by the Contractor or his employees with respect to any Subject Invention covered by this paragraph. (1975 AUG)

(f) *Contracts placed for NASA.* NASA will provide any necessary patent rights clause. See 9-107.8.

(g) *Contracts relating to Space.* When considered appropriate under 9-107.9, the following paragraph (c)(i) shall be substituted for the corresponding paragraph of the Patent Rights clause of 7-302.23(a), (b) or (c) to be included in a contract.

(c)(i) hereby grants to the Government a paid-up, nonexclusive and royalty-free license to practice and have practiced each Subject Invention (made by

the Contractor) throughout the world by or on behalf of the Government, States, and municipal governments, including the practice of each such Subject Invention (i) in the manufacture, use, and disposition of any article or material, (ii) in the use of any method, or (iii) in the performance of any service, acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or funds otherwise derived through the Government. In addition, the Government shall have the right to grant licenses to others, under such terms and conditions as may be prescribed, for the practice of such Subject Invention throughout the world in the design, development, manufacture, operation, maintenance and testing of communications satellite systems, and of equipment, components, and ground tracking, transmitting and receiving facilities therefor. (1975 AUG)

(End of clause paragraph)

(h) *Patent Rights Clause - Acquisition by the Government (Short Form).* When a contract is determined to fall within 9-107.3(a)(1) and (2), the following clause may be used in place of the clause of 7-302.23(a) in contracts for basic or applied research with a nonprofit organization other than for the operation of a Government-owned research or production facility.

PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (SHORT FORM) (1975 AUG)

(a) *Definitions.* "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(b) *Invention disclosures and reports.*

(1) The Contractor shall furnish the Contracting Officer:

(i) a complete technical disclosure for each Subject Invention, within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor(s), and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) interim reports, preferably on DD Form 882, at least every twelve (12) months from the date of the contract, listing Subject Inventions during that period and certifying that all Subject Inventions have been disclosed or that there are no such inventions; and

(iii) an acceptable final report, preferably on DD Form 882, within three (3) months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(2) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(c) *Allocation of principal rights.*

(1) The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Contractor under paragraph (c)(2) and (d) of this clause.

(2) The Contractor, or the employee-inventor with authorization of the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of ASPR 9-109.6. A request for a determination of whether the Contractor, or the employee-inventor, is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (b)(1) of this clause, or not later than three (3) months thereafter or such longer

period as may be authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in ASPR 9-109.6(a). Each determination of greater rights under this contract normally shall be subject to the provisions of ASPR 9-109.6(e)(2) and (3).

(d) *Minimum rights to the Contractor.* The Contractor reserves a revocable, nonexclusive royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title.

(e) *Employee and subcontractor agreements.* Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall:

(i) obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel such as clerical and manual labor personnel;

(ii) insert in each subcontract, having experimental, developmental, or research work as one of its purposes, provisions making this clause applicable to the subcontractor and his employees; and

(iii) promptly notify the Contracting Officer of the award of any such subcontract by providing him with a copy of such subcontract and any amendments thereto.

(End of clause)

(i) *Patent Rights Clause - Deferred (Short Form).* When a contract is determined to fall within 9-107.3(a)(1) and (4), the following clause may be used in place of the clause in 7-302.23(c) in contracts for basic or applied research with a nonprofit organization other than for the operation of a Government-owned research or production facility.

PATENT RIGHTS - DEFERRED (SHORT FORM) (1975 AUG)

(a) *Definitions.* "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(b) *Invention disclosures and reports.*

(1) The Contractor shall furnish the Contracting Officer:

(i) a complete technical disclosure for each Subject Invention, within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor(s), and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) interim reports, preferably on DD Form 882, at least every twelve (12) months from the date of the contract, listing Subject Inventions during that period and certifying that all Subject Inventions have been disclosed or that there are no such inventions; and

(iii) an acceptable final report, preferably on DD Form 882, within three (3) months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(2) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(c) *Allocation of principal rights.*

(1) After a Subject Invention is identified, the Contractor agrees to assign to the Government the entire right, title, and interest througout the world in and to each Subject Invention, except to

the extent that rights are retained by the Contractor under paragraphs (c)(2) and (d) of this clause.

(2) The Contractor, or the employee-inventor with authorization of the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of ASPR 9-109.6. A request for a determination of whether the Contractor, or the employee-inventor, is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (b)(1) of this clause, or not later than three (3) months thereafter or such longer period as may be authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in ASPR 9-109.6(a). Each determination of greater rights under this contract normally shall be subject to the provisions of ASPR 9-109.6(e)(2) and (3).

(d) *Minimum rights to the Contractor.* The Contractor reserves a revocable, nonexclusive royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title.

(e) *Employee and subcontractor agreements.* Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall

(i) obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel such as clerical and manual labor personnel;

(ii) insert in each subcontract, having experimental, developmental, or research work as one of its purposes, provisions making this clause applicable to the subcontractor and his employees; and

(iii) promptly notify the Contracting Officer of the award of any such subcontract by providing him with a copy of such subcontract and any amendments thereto.

(End of clause)

7-302.24 *Reserved.*

7-302.25 *Military Security Requirements.* Insert the Military Security Requirements clause in accordance with 7-104.12.

7-302.26 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805.3, insert the clauses in 7-104.20.

7-302.27 *Government Delay of Work.* Insert the clause in 7-104.77.

7-302.28 *Title and Risk of Loss.* Insert the clause in 7-103.6.

7-302.29 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-302.30 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-302.31 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-302.32 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-303 Clauses To Be Used When Applicable.

7-303.1 *Clauses for Contracts Involving Construction Work.* In accordance with 7-602.23, 12-106, 18-701, and 18-703, insert the Labor Standards Provisions in 7-602.23.

7-303.2 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-303.3 *Reporting and Refund of Royalties.* In accordance with 9-110(d) and 9-111, insert the appropriate clause or clauses in 7-104.8.

7-303.4 *Excess Profit.* In accordance with 7-104.11, insert the appropriate clause therein.

7-303.5 *Preference for Certain Domestic Commodities.* In accordance with 6-305, insert the clause in 7-104.13.

be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be for the items and combinations of items which result in the lowest aggregate price to the Government, including such administrative costs.

(c) Notwithstanding (a) above, when "additional services" are added to any schedule, such "additional services" items will not be considered in the evaluation of bids.

(End of clause)

(c) The following provision governing award shall be included in all solicitations.

AWARD (1970 MAY)

Award shall be made to the qualified low bidder by area under each of the specified schedules to the extent of his stated guaranteed daily capability as provided herein and the clause entitled "*Estimated Quantities.*" The Government reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

7-2003.60 *Solicitation Provisions for Laundry and Dry Cleaning Services.* Pursuant to 22-702, insert the following provision in all solicitations for laundry and dry cleaning services.

INSTRUCTIONS TO BIDDERS (1967 APR)

(a) Bids must include unit prices for each item in a lot. Failure to bid on any item in a lot shall be cause for rejection of the bid on that lot. Bids shall be evaluated on the basis of the estimated quantities stated in the invitation. Subject to the provision contained herein, award generally shall be made to a single bidder for all lots. The Government reserves the right, however, to award by individual lot when the Contracting Officer determines that this is more advantageous to the Government.

(b) Upon application to the Contracting Officer, types of articles to be serviced may be inspected prior to bidding.

(End of provision)

7-2003.61 *Predetermination of Rights in Technical Data.* In accordance with 9-202.2(d)(3), insert the following provision.

PREDETERMINATION OF RIGHTS IN TECHNICAL DATA (1976 JUL)

(a) The offeror is requested to identify in his proposal which of the below listed data (including data to be furnished in whole or in part by a subcontractor) when delivered, he intends to identify as limited rights data in accordance with paragraph (b) of the "Rights in Technical Data and Computer Software" clause of this Solicitation. This identification need not be made as to data which relate to standard commercial items which are manufactured by more than one source of supply.

(*The Solicitation should list here that technical data or portions thereof with respect to which the Government proposes use of the predetermination procedure. Data which clearly comes within paragraph (b)(1) of the "Rights in Technical Data and Computer Software" clause and would therefore be acquired with unlimited rights should not be listed.*)

(b) Limited rights data may be identified as such, pursuant to (a) above only if it pertains to items, components or processes developed at private expense. Nevertheless, it cannot be so identified if it comes within paragraph (b)(1) of the "Rights in Technical Data and Computer Software" clause. At the request of the Contracting Officer or his representative, the offeror

agrees to furnish clear and convincing evidence that the data which will be so identified comes within the definition of limited rights data.

(c) The listing of a data item in paragraph (a) above does not mean that the Government considers such item to come within the definition of limited rights data.

(End of provision)

7-2003.62 *Options to Award and Pay in United States Owned Foreign Currency.* In accordance with 6-1104, insert the following provision.

OPTION TO AWARD AND PAY IN FOREIGN CURRENCY (1974 APR)

(a) Offerors are required to state their price in United States dollars. Such price may also be stated wholly in the currency of the countries listed in the Schedule, or in a combination of United States dollars and the currency of any of the listed countries.

(b) Offerors shall state separately the United States dollar content, if any, in United States dollars. The term "United States dollar content" means the United States dollar cost to an offeror for United States end products or services (including costs of transportation furnished by United States-flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

(c) The Contracting Officer reserves the right to award to that responsive offeror willing to accept payment in whole or in part in a currency of any of the listed countries and whose offer is considered the most advantageous to the United States Government, even though the total price of the accepted offer may be more than the price of an offer received in United States dollars.

(End of clause)

7-2003.63 *Progress Payments Exclusively for Small Business.* In accordance with E-504.3, insert the following provision.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

PROGRESS PAYMENTS EXCLUSIVELY FOR SMALL BUSINESS (1974 APR)

The Progress Payments clause will be available to Small Business concerns only, and will not be included for contractors who are not Small Business concerns.

(End of provision)

7-2003.64 *Progress Payments.* In accordance with E-504.4, insert the following notice.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

PROGRESS PAYMENTS* (1974 APR)

The need for progress payments conforming to regulations (Appendix E, Armed Services Procurement Regulation) will not be considered as a handicap or adverse factor in the award of contracts. Authorized progress payments will not be a factor for evaluation of bids. The appropriate "Progress Payment" clause attached hereto will be included in the contract awarded in the manner herein provided, however, the clause shall be inoperative during the time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs. For Small Business concerns the clause designated "Progress Payments for Small Business Concerns" (7-104.35(b)) shall be used for such Contractors. For Contractors who are not Small Business concerns, the clause designated "Progress Payments for Other Than Small Business Concerns" (7-104.35(a)) shall be used.

(End of notice)

*Do not use the last sentence of this notice for procurements mentioned in E-504.2 and E-504.3.

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7-2003.76 *Identification of Restricted Rights Computer Software.* In accordance with 9-603(b), insert the following provision.

IDENTIFICATION OF RESTRICTED RIGHTS COMPUTER SOFTWARE (1977 APR)

The offeror's attention is called to the requirement in the "*Rights in Technical Data and Computer Software*" clause that any restrictions on the Government concerning use or disclosure of computer software which was developed at private expense and is to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. Therefore, the offeror is requested to identify in his proposal to the extent feasible any such computer software which was developed at private expense and upon the use of which he desires to negotiate restrictions, and to state the nature of the proposed restrictions. If no such computer software is identified, it will be assumed that all deliverable computer software will be subject to unlimited rights.

(End of clause)

7-2003.77 *Licenses and Permits.*

LICENSES AND PERMITS (1977 APR)

Offerors without necessary operating authority may submit offers, but the offerors shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits prior to award of a resultant contract and for complying with all laws, ordinances, statutes and regulations in connection with the furnishing of the services herein.

(End of clause)

7-2003.78 *Notice of Compensation for Professional Employees.* In accordance with 12-1007.3, insert the following notice.

NOTICE OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (1978 JUN)

Note the provisions relating to evaluation of compensation for professional employees set forth elsewhere in this Solicitation. Failure to comply with such provisions may constitute sufficient cause to justify non-selection of a proposal. The total compensation plan required to be submitted by the offeror will be viewed as being within the purview of Public Law 87-653.

(End of notice)

DICTIONARY

This dictionary contains acronyms and terms that are relevant to current policies and practices regarding data and data rights in competitive weapon system acquisitions. Most of the definitions are direct quotes from references designated by a dictionary reference number or numbers in parentheses at the end of the definition. The applicable references are listed at the end of this dictionary. Some definitions have been reworded and are so designated by the dictionary reference number and the word "reworded" in parentheses. Also, some definitions were developed by Doty Associates and accordingly no dictionary reference number is cited. In some instances, two definitions for a term are presented when significant differences were noted in the cited references.

ACCESSION LIST - A periodically published list by a contractor of its internal management or technical (engineering) data generated incidental to performing day-to-day contract effort. This listing is a data product prepared in compliance with a specific Data Requirements Description (DRD). (2)

ACCESSION LIST DATA - The data, management, or technical (engineering), which a contractor may prepare incidental to performing day-to-day contract effort. These data are not specificallay required by the contract, but are prepared by a contractor on his own volition and for his internal use. (2)

ACO - Acronym for Administrative Contract Officer.

ACQUIRING ACTIVITY - A subordinate command where the procuring contracting office is located. It includes the program office and related functional support offices as well as procurement offices. Examples of procuring activities are AFSC/ASD, AFLC/OC-ALC, DARCOM/MICOM, and NMC/NAVAIRSYSCOM. (15)

ACQUISITION - The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase, lease, or barter, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. (39)

ACQUISITION MANAGEMENT SYSTEM - A document contract requirement which directs or constrains the manner in which the contractor achieves the end product of the contract. It generally outlines a detailed procedure which describes an orderly way of assisting managers in defining or stating policy, objectives, and requirements; assigning responsibility; achieving efficient and effective utilization of resources; periodically measuring performances; comparing that performance against stated objectives and requirements; and taking appropriate action. (3)

ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST (AMSDL) - A master list of approved Acquisition Management Systems, Data Source Documents, and Data Requirements to be used when applying such requirements to a given contract. (3)

ADMINISTRATIVE CONTRACTING OFFICER (ACO) - A contracting officer at a contract administration office. (4)

ADMINISTRATIVE/MANAGEMENT DATA - 1. Data used to administer, manage, and enforce contractual requirements; designed to provide management visibility; project management reporting; milestone management technique data, such as network information; and data for status, milestone problems, and plans that are not functionally oriented. This definition excludes financial and technical data, although such data may be secondary within management reporting. (1) 2. Data used to administer, manage and enforce contractual requirements; data designed to provide management visibility; project management reporting; milestone management technique data such as PERT or other network information; and data for status, milestones, problems, and plans that are not functionally oriented. This area excludes financial and technical data, although such data may be secondary within management reporting. (5)

AMSDL - Acronym for Acquisition Management Systems and Data Requirements Control List.

AUTHORIZATION & CONSENT - Permission granted by the government whereby a contractor or subcontractor is permitted to use and manufacture any invention covered by a patent of the United States which is an essential part of an acceptable contract deliverable or is a required part of the process which results in a contract deliverable. Government liability for patent infringement is not automatic if it authorizes and consents to use of a patented invention. (6 Reworded)

CDRL - Acronym for Contract Data Requirements List.

CI - Acronym for Configuration Item.

COMMERCIAL ITEM - An item, including both supplies and services, of a class or kind that is regularly used for other than Government purposes and is sold or traded in the course of conducting normal business operations. (1)

COMPUTER DATA - Basic elements of information used by computer equipment in responding to a computer program. (7)

COMPUTER DATA BASE - A collection of data in a form capable of being processed and operated on by a computer. (42)

COMPUTER PROGRAM - A series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis

programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user. (41)

COMPUTER SOFTWARE - Computer programs and computer data bases. (40)

COMPUTER SOFTWARE DOCUMENTATION - Technical data, including computer listings and printouts, in human-readable form which (a) documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software to obtain desired results from a computer. (43)

CONFIGURATION - The functional and physical characteristics of materiel as described in technical documents and achieved in a product. (9)

CONFIGURATION AUDIT - Checking an item for compliance with the configuration identification. (9)

CONFIGURATION CONTROL - 1. Controlling changes to the configuration and its identification documents. (9) 2. The systematic evaluation, coordination, approval or disapproval, and implementation of all approved changes in the configuration of a Configuration Item (CI) after formal establishment of its configuration identification. (19)

CONFIGURATION IDENTIFICATION - 1. Selection of the documents which identify and define the configuration baseline characteristics of an item. (9) 2. (An) approved or conditionally approved technical documentation for a configuration item as set forth in specifications, drawings and associated lists, and documents referenced therein. (19)

CONFIGURATION ITEMS - Materiel items designated by DoD Components for configuration management. They may differ widely in complexity, size, and kind. Examples are an aircraft, shop, mobile test unit, navigation system, embedded computer, computer program, facility, electronic system, test meter or a round of ammunition. (9)

CONFIGURATION MANAGEMENT - A discipline applying technical and administrative direction and surveillance to (a) identify and document the functional and physical characteristics of a configuration item, (b) control changes to those characteristics, and (c) record and report change processing and implementation status. (19)

CONFIGURATION STATUS ACCOUNTING - Recording and reporting the implementation of changes to the configuration and its identification documents. (9)

CONTRACT DATA REQUIREMENTS LIST (CDRL) - A list of data requirements that is authorized for a specific procurement and are made a part of the contract. This list is prepared on DD Form 1423, "Contract Data Requirements List". (2)

CONTRACTOR - An individual or organization outside the U.S. Government that has accepted any type of agreement or order for providing research, supplies, or services to a U. S. Government agency. The term specifically includes both prime contractors and subcontractors. (10)

CRITICAL TECHNOLOGY - Technical data, whose acquisition by a potential adversary would prove detrimental to the national security of the United States. Control of critical technology requires the control of associated critical end products (defined as "keystone") that embody extractable critical technology or that consist of equipment which completes a process line, allowing the line to be fully utilized. (10)

DATA - (Any) recorded information, regardless of form or characteristic. (17)

DATA CALL - A request by the System/Project Manager, Commander or other authority to all Government participants to submit their requirements for contractor-prepared data on a given procurement action. (2)(8)

DATA ITEM DESCRIPTION (DID) - A form (DD Form 1664) which specifies the data required to be furnished. The forms specifically define, using the descriptive method, the content, preparation instructions, format and intended use of each data product. (8)

DATA, LIMITED RIGHTS - See LIMITED RIGHTS.

DATA MANAGEMENT - The discipline which embraces the identification, coordination, collation, validation, integration, and control of data requirements, planning for the timely and economical acquisition of data; insuring the adequacy of acquired data for their intended use; and management of data assets after receipt. This discipline also includes supervision of the distribution of data required under contract and monitoring storage, retrieval, and disposal of these data. (2)

DATA MANAGEMENT OFFICE - The organizational element at any level of DoD component which serves as a data management central focal point and provides advice and assistance directly to all cognizant activities. (2)

DATA MANAGEMENT OFFICER - An individual designated by a responsible authority (Commander, System/Project Manager, Plant Representative, Director, or other authority) to assist and advise in applying data management within the area of responsibility of the appointing authority. The responsibility of the Data Management Officer includes virtually all functional lines; therefore, the authority of the Data Management Officer must be formally defined and delegated such that, regardless of this organizational placement, he can be responsive and accomplish his responsibilities under the Data Management Program. (2)

DATA MANAGER - The individual(s) assigned to accomplish the functions of the Data Management Office(s). (2)

DATA PACKAGE - A collection of data products (items) which is complete for a specific use. (2)(8)

DATA PRICE - 1. The price identified by the contractor for a data requirement listed on the Contract Data Requirements List (CDRL). (2) 2. The price associated with preparing and delivering a technical data item to the Government. (8)

DATA REPOSITORY - A DoD organizational entity, component, or a specifically designated contract facility which is responsible for indexing, storing, retrieving and distributing technical data. (8)

DATA REQUIREMENT - A requirement that a contractor prepare, maintain, or deliver data. Acquisition Management Systems and Data Source Documents generally include a data requirement. (3)

DATA REQUIREMENTS DESCRIPTION (DRD) - A form that describes an item of data required by the Government and defines the content, preparation, instructions, format, and intended use of each data product. (2)

DATA REQUIREMENTS DESCRIPTION (DRD) APPLICATION MATRIX - A matrix that provides information regarding the use of the DRD relative to contract type, defense materiel categories, intended use categories, life cycle phases, and MIL-SPEC/STD references. (2)

DATA REQUIREMENTS REVIEW BOARD (DRRB) - A Board normally comprised of staff specialists and representatives from those functional areas or organizational units which have data requirements, appointed by a responsible authority to review, approve, or recommend approval of the contract data requirements in support of end item procurement involving contracts of one million dollars or more, or on other programs where the data requirements are significant or unusual. The Board may also assist and advise in the management of procured data. (2)

DATA SOURCE DOCUMENTS - Documents such as instructions, manuals, specifications, standards, etc., which prescribe Data Requirements and may also prescribe Acquisition Management Systems. (3)

DATA SYSTEM - Combinations of personnel efforts, forms, formats, instructions, procedures, data elements and related data codes, communications facilities, and automatic data processing equipment, which provide an organized and interconnected means, either automated, manual, or a mixture of these for recording, collection, processing, and communicating data. (11)

DEFERRED DELIVERY - 1. The practice of timing the delivery of technical data specified in a contract to a firm, operational need. This technique should be used only when a data requirement can be determined at the time of contracting and therefore is specified on the Contract Data Requirements List (CDRL), but the time or place of delivery is not firm. (2) 2. A situation in which the contract specifies the technical data to be delivered but does not schedule a delivery date. (8)

DEFERRED ORDERING - 1. Delayed ordering of data generated in the performance of the contract until such time as a need for the data can be established and the data requirements can be specifically identified for delivery under the contract. In many instances it is difficult to determine during solicitation and negotiation stages exactly what data are needed. The information available at these stages may suggest the need for some data but further information may be needed to identify the specific data requirements. (2) 2. Delaying the ordering of the data until the need is economically determined. (8)

DEFERRED REQUISITIONING - A situation wherein the contract specifies the format, range, and kinds of data that the contractor is obligated to deliver when requisitioned by the Government, and prescribes the ordering conditions and pricing terms. It contemplates retention of masters and copies by the contractor and delivery of copies of individual drawings (or other items of data) as needs arise. (8)

DELIVERABLE DATA - Data listed on the Contract Data Requirements List (CDRL) required to be delivered under terms of the contract. (2)

DELIVERABLE TECHNICAL DATA - Technical Data (listed on the Contract Data Requirements List) required to be delivered under terms of the contract. (8)

DELIVERY OF DATA - The transfer of data from the contractor/DoD component to the activity designated in the contract. (2)

DELIVERY OF TECHNICAL DATA - The transfer of technical data from the contractor/DoD component to the activity designated in the contract. (8)

DID - Acronym for Data Item Description.

DoD AUTHORIZED DATA LIST (DoDADL) - A compilation of standard (Data Requirements Descriptions (DRDs) which have been authorized for use in procurement. (2) Superceded by the Acquisition Management Systems and Data Requirements Control List (AMSDL).

DoD DATA MANAGEMENT POLICY COMMITTEE - A DoD committee established by charter. (2)

DoD POTENTIAL CONTRACTOR - An individual or organization outside Department of Defense declared eligible for documentation services by a sponsoring DoD activity on the basis of registration and active participation in a program specifically designed to exchange information concerning Defense support capability. (10)

DoD PRODUCTION ENGINEERING AND LOGISTICS INFORMATION PROGRAM - (A DoD Program that provides) for the handling and dissemination of engineering data, blueprints, standards, specifications, technical manuals, logistics data, management information, and other documentary information, that are products of or in direct support of acquisition, inventory management, storage, maintenance, distribution, movement and disposal of materiel, supplies, tools, and equipment. (12)

DoD SCIENTIFIC AND TECHNICAL INFORMATION PROGRAM - (A DoD program that provides) for the handling and dissemination of technical data and documents or their abstracts, the publishing of technical journals, the preparation and conduct of technical meetings and symposia, and the dissemination of information acquired by all other means, that are products or are in direct support of DoD research, development, test and evaluation processes, and the management thereof, through the phase of design release to production. (12)

DoDADL - Acronym for DoD Authorized Data List.

DRD - Acronym for Data Requirements Description.

DRRB - Acronym for Data Requirements Review Board.

DTIC - Acronym for Defense Technical Information Center.

ELIGIBLE USER - Any DoD office, contractor, subcontractor, DoD potential contractor, or other Government office or its contractor whose eligibility and need to receive DoD technical information has been certified. (10)

EMINENT DOMAIN - A government's right to take private property for public use with just compensation to the property owners.

ENTITLEMENT - Rights to claim benefits or property without due process of law.

EQUIPMENT PERFORMANCE DATA - Consists of historical information relating to maintainability and reliability characteristics of systems, sub-systems and components or weapons and end item equipments during their operational application. (13)

FINANCIAL DATA - Data such as dollar expenditures, forecast, status, and other cost information, regardless of whether manpower, accounting, performance, and contract administration information are included. (2)

FORM, FIT AND FUNCTION - Technical data pertaining to end-items, components or processes, prepared or required to be delivered under any Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating, and attachment characteristics, functional characteristics and performance requirements (such as) specification control drawings, catalog sheets, envelope drawings, etc. (20)

INDUSTRY INFORMATION CENTERS - Centers established by DoD Components to inform the Defense industrial community of DoD acquisition, research and development requirements, plans, and future needs. They serve as DoD access points to Defense planning and requirements documents for representatives of industry, small business, university and nonprofit institutions registered for access to DoD information services. (10)

INFORMATION REQUIREMENT - The functional area expression of need for data, information, or reports to carry out specified and authorized functions or management purposes, and which call for the establishment or maintenance (update) of data, information, reporting or recordkeeping systems whether manual or automated. (11)

INFORMATION SYSTEM - An orderly way, generally including a documented procedure, of providing managers the information necessary for (a) assessing the effectiveness of existing policies and the development and evaluation of policy changes, and (b) accomplishing objectives and utilizing Government and contractor resources in the most effective and efficient manner. An information system may be manual or automated. "Data banks" are included in this definition. (11)

LIMITED RIGHTS - Rights to use, duplicate, or disclose technical data in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, by (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for reproduction of the computer software, or (c) used by a party other than the Government, except for: (aa) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, provided that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or (bb) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (aa) above. (33)

LIMITED RIGHTS TECHNICAL DATA - Except as provided (by Unlimited Rights in Technical Data), unpublished technical data pertaining to items, components or processes developed at private expense will be acquired with limited rights, provided that the data is identified as limited rights data in accordance with paragraph (b)(2) of the clause in 7-104.9(a) (of DAR (ASPR)). Unpublished refers to material that has not been subject to "publication" as defined in Title 17, United States Code, para. 101. (18)

MAINTENANCE PERFORMANCE DATA - Relates to the use and application of the workforce, industrial equipment and dollars to sustain weapons and end item equipments in an operational status. (13)

MAJOR SYSTEM - A composite of equipment, skills, and techniques capable of performing and/or supporting an operational role which required or will require research, development, test and evaluation investment of design, development, test and evaluation investment estimated in excess of $50 million or total production investment estimated in excess of $200 million. (14)

MARCH-IN RIGHTS - A Government right to obtain a license for a patent covering an invention produced in the course of federally financed research and development work, in the event the licensee does not develop the patent to which he has exclusive license.

NONDELIVERABLE DATA - Data required to be prepared and maintained by a contractor in performance of the contract; however, no delivery schedule is contained in the contract nor is delivery contemplated by the Government. (2)

OFFICE OF PRIMARY RESPONSIBILITY (OPR) - A preparer/originator of a Data Requirements Description (DRD). (2)

OPR - Acronym for Office of Primary Responsibility.

ORDERING OF DATA - The identification in a contract of the technical data which the contractor shall be obligated to deliver under the contract. (8)

OTHER DATA - Data, other than those defined (as technical or financial data) which may be needed by the departments/agencies to develop, acquire, install, test, operate, maintain, overhaul, repair, modify, supply, support, or procure systems and equipment. (2)

PATENT - A statutory monopoly granted by the Federal Government for a limited time to an inventor to exclude others from making, using or selling the invention claimed in the patent, and the opportunity to enforce that control by court action against infringers. In return for the grant, the inventor gives the public the right to free and unrestricted use of his invention after the expiration of the life of a patent, which is 17 years. A patent cannot be renewed after its expiration. The inventor who holds the rights to a patent, in effect holds a property right in his invention, hence has a monopoly on its use, manufacture, or sale. This exclusive right is effective in the United States and its territories and possessions. In order to obtain protection in foreign countries, the inventor must make application in each country in which he seeks protection within one year after filing his US patent application. The length of the grant in foreign countries varies from 10 to 20 years. (38)

PATENT RIGHTS - A right insured by a patent that guarantees the owner exclusive use to the patented item, as he wishes, for a specified period of time as prescribed by law.

PATENT RIGHTS (DEFERRED) - The allocation of rights in inventions resulting from a contract (are) deferred until after an invention has been identified in accordance with the criteria of (DAR (ASPR)) 9-109.6(d). (21)

PATENT RIGHTS (RETENTION) - Provides that title to any inventions resulting from (a) contract remains (with) the contractor, subject to the acquisition of certain specified rights by the Government. (22)

PATENTABLE - A new and useful device or process, or an improvement thereon, upon which a patent could be granted.

PCO - Acronym for Principal Contracting Officer.

PRE-AWARD PATENT RIGHTS DOCUMENTATION - A DoD form (DD Form 1564) that is included in solicitations when it is determined that the Government will not acquire the patent rights in accordance with DAR (ASPR) 7-302.23(a) or 7-302.23(h). (23 Reworded)

PREDETERMINATION OF RIGHTS IN TECHNICAL DATA - A procedure for including an agreement, between a contractor and the Government, in a contract prior to contract award, when the Government needs technical data with unlimited rights and the contractor intends to deliver data with limited rights. (25 Reworded)

PRIMARY DISTRIBUTION - The initial distribution of a technical document after completion of the original manuscript or its equivalent. (10)

PRINCIPAL CONTRACTING OFFICER (PCO) - A contracting officer located at a purchasing office. (4)

PROCUREMENT OF RIGHTS IN INVENTIONS, PATENTS AND COPYRIGHTS - Even though no infringement has occurred or been alleged, it is the policy of the Department of Defense to procure rights under patents, patent applications, and copyrights whenever it is in the Government's interest to do so and the desired rights can be obtained at a fair price. (26)

PROPRIETARY DATA - An obsolete term for trade secrets. (27)

PUBLIC DOMAIN (TECHNICAL DATA) - Data available to the public without copyright or other restriction of any kind. (24)

REPORTING - The process by which data or information for a report is collected, organized, transmitted, and retained. (11)

RESPONSIBLE ACTIVITY - The activity assigned specific functional category/discipline responsibility and responsible for processing and coordinating Data Requirements Descriptions (DRDs) within DoD for inclusion in the DoD Authorized Data List (DoDADL). This responsibility includes the resolution and incorporate of comments received as a result of the coordination process, and maintaining the currency of DRDs contained in the DoDADL. (2)

RESTRICTED RIGHTS - Apply only to computer software, and include, as a minimum, the right to: (a) use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government; (b) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative; (c) copy computer programs for safekeeping (archives) or backup purposes; (d) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights; and, in addition, any other specific rights not inconsistent therewith listed or described in this contract or described in a license or agreement made a part of a contract. (28)

RESTRICTIVE MARKING - Identification placed upon technical data by a contractor that indicates the authorized use of the technical data in accordance with the terms of the rights in technical data and computer software.

ROYALTIES - Any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents or patent applications. (29)

ROYALTY-FREE LICENSE - A revocable or irrevocable, nonexclusive license, for the practice of the invention throughout the world, may be reserved for a contractor, when the principal or exclusive rights in an invention are acquired by the Government. (31)

SPECIFICATION - A document intended primarily to identify items, and used in procurement to clearly and accurately describe the essential technical requirements for items, materials or services being purchased. (30)

SUBJECT INVENTION - Any invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice either (a) in the performance of the experimental, developmental, or research work called for under a contract, or (b) in the performance of any experimental, developmental, or research work relating to the subject matter of a contract which was done upon the understanding that a contract would be awarded. (37)

SYSTEM ACQUISITION PROCESS - The sequence of acquisition activities starting from the agency's reconciliation of its mission needs, with its capabilities, priorities and resources, and extending through the introduction of a system into operational use or the otherwise successful achievement of program objectives. (16)

TCO - Acronym for Termination Contracting Officer.

TECHNICAL DATA - 1. Recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration. (32)
2. Recorded information used to define a design and to produce, support, maintain, or operate items of defense materiel. These data may be recorded as graphic or pictorial delineations in media such as: drawings or photographs; text in specifications or related performance or design type documents; in machine forms such as punched cards, magnetic tape, computer memory printouts; or may be retained in computer memory. Examples or recorded information include engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. (2)

TECHNICAL DATA MANAGEMENT - The discipline which embraces the identification, coordination, collation, validation, integration, and control of data requirements; planning for the timely and economical acquisition of data; insuring the adequacy of acquired data for their intended use; and management of data assets after receipt. This discipline also includes supervision of the distribution of data acquired under contract and monitoring storage, retrieval and disposal of these data. (8)

TECHNICAL DATA MANAGEMENT OFFICE - The organizational element at any level of a DoD component which serves as a data management central focal point and provides advice and assistance directly to the head of the component in the implementation of this Instruction and related implementing directives. (8)

TECHNICAL DATA MANAGEMENT OFFICER - An individual designated by a responsible authority (Commander, System/Project Manager, Plant Representative, Director

or other authority) to assist and advise in applying data management disciplines within the area of responsibility of the appointing authority. (8)

TECHNICAL DATA REQUIREMENTS REVIEW BOARD - A Board, comprised of representatives from those functional or organizational units which have data requirements, and appointed by a responsible authority (System/Project Manager, Commander or other authority) to review the Contract Data Requirements List (CDRL) and assist and advise in the management of technical data. (8)

TECHNICAL INFORMATION - Information, including scientific information, which relates to research, development, engineering, test, evaluation, production, operation, use, and maintenance of munitions and other military supplies and equipment. (10)

TECHNICAL INFORMATION DISSEMINATION - A fundamental and integral part of each RDT&E effort (contractual or in-house) that ensures, within procedures established for security and other specific access restrictions, maximum utility of and access to technical information about and technical documents generated from Defense-supported RDT&E. (10)

TECHNICAL INFORMATION DISSEMINATION ACTIVITY - Any activity, such as DTIC (Defense Technical Information Center), that operates to assist individuals and organizations within the Department of Defense to effect adequate and timely dissemination of technical information describing planned or ongoing RDT&E effort and the documented results of such efforts and to provide systems and services to assist eligible users to identify, access, acquire, and use DoD technical information. (10)

TECHNICAL INTELLIGENCE - Foreign scientific and technological intelligence (such as): (a) foreign developments in basic and applied research in natural and applied sciences and in applied engineering techniques, and (b) scientific and technical characteristics, capabilities, and limitations of specific foreign weapons, weapons systems and materiel, and the production methods employed for their manufacture. (12)

TECHNOLOGY TRANSFER - The process through which Government research and technology are transformed into processes, products, or services that can be applied to actual or potential public or private needs. It includes the application of technology that has been developed for a particular mission and, after modification and diversification, fills a different need in another environment. (10)

TERMINATION CONTRACTING OFFICER (TCO) - A contracting officer responsible for the settlement of terminated contracts. (4)

TITLE - A document that is proof of legal ownership.

TRADE SECRET - May consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process for manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list or customers. (34)

UNLIMITED RIGHTS - Rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so. (36)

UNLIMITED RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE - (Government has) rights to use technical data and duplicate or disclose technical data and computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so. (35)

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5. NAVMAT Instruction 4000.15A, Department of the Navy Data Management Program, 2 February 1971.

6. DAR (ASPR) 7-103.22, March 1964.

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8. DoD Instruction 5010.12, Management of Technical Data, 7 April 1970.

9. DoD Directive 5010.19, Configuration Management, 1 May 1979.

10. DoD Instruction 5200.21, Dissemination of DoD Technical Information, 27 September 1979.

11. DoD Directive 5000.19, Policies for the Management and Control of Information Requirements, 12 March 1976.

12. DoD Directive 5100.36, Department of Defense Technical Information, 31 December 1962.

13. DoD Instruction 4151.12, Policies Governing Maintenance Engineering within the Department of Defense, 19 June 1968.

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35. DAR (ASPR) 7-104.9(a)(1), March 1979.

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37. Armed Services Board of Contract Appeals, No. 5150, Navy Appeals Panel, 17 July 1959.

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39. Defense Acquisition Circular 76-18, 12 March 1979.

40. DAR (ASPR) 9-601(d).

41. DAR (ASPR) 9-601(e).

43. DAR (ASPR) 9-601(f).

44. DAR (ASPR) 9-601(g).

NOTE: Sections 1 and 9 of DAR/ASPR relate DoD policy and have no specific date, unlike contract clauses in Section 7. Definitions developed from these policy sections are derived from policy statements in effect at the time of the report.

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ARMED SERVICES BOARD OF CONTRACT APPEALS DECISIONS

ASBCA #		
16516	Teledyne Continental Motors, Division of Teledyne Industries, Inc. Patents-Notice of Patents in Drawings-Removal by Government	October 29, 1975
18704	Continental Electronics Mfg. Co. Proprietary Data-Acquisition of Rights in Proprietary Data-Limited Rights-Allowability	September 29, 1975
15995	Triangle Electronic Mfg. Co., Inc. Changes-Compensability-Research and Development-Format of Documents	July 30, 1974
15394	General Dynamics Corp., Convair Division Cost Principles-Allowable Costs-Bid and Proposal-Independent Research or Development	June 15, 1972
12932	R. C. Allen Business Machines, Inc. Default Terminations-Repurchase Against Contractor's Account-In house Manufacturing by Government	February 22, 1972
15798	Joanell Laboratories Appeals-Necessity for Contract and Disputes Clause-Claim Based on Completed Contract-Abatement	February 1, 1972
14556	Compudyne Corp. Data and Copyrights-Technical Data Contract Clauses-Express Terms of Unrestricted Use-Implied Agreement of Nondisclosure-Burden of Proof	November 30, 1971
15162	Sparkadyne, Inc. (Richard Clements, Trustee in Bankruptcy) Default-Causes for Default Termination-Refusal to Perform-Abandonment-Cessation of Business	April 29, 1971
14147	Philco-Ford Corp. Data-Proprietary Data Clause-Scope-Manufacturing Process-Disassembly Methods	October 23, 1970

13622	Sylvania Electric Products, Inc. Price Negotiation-Defective Cost or Pricing Data-Reasonable Available Data-Effective Disclosure-Submission of Document	July 14, 1970
13198	Transdyne Corp. Default-Causes Beyond Contractor's Control-Defective Specifications	June 17, 1970
13013	Telephonics (A division of Instrument Systems Corp.) Specifications-Interpretation-"As Required"-Option to Order	March 17, 1970
13067	North American Rockwell Corp. Cost Principles - Bid Preparation Costs - Proposal Expense	July 22, 1969
9005	Bell Aerosystems Company, Division of Bell Aerospace Corp. Patents-Rights Clauses-Time of Reduction to Practice	March 8, 1967
10200	Bendix Radio Division, Bendix Corp. Use of Proprietary Data - Contract Interpretation - Waiver v. Express Statement	November 18, 1964
9982	The B. F. Goodrich Co. Appeal-Jurisdiction of Board-Issue of Law	August 17, 1964
9100	The B. F. Goodrich Co. Changes-Limitation on Methods of Performance	April 23, 1964
5150	Rhodes-Lewis Co. and McCulloch Corp. Jurisdiction--Patent Rights--Motion to Dismiss	July 17, 1959

DECISIONS OF THE COMPTROLLER GENERAL

B-170680	Pyrodyne Division, William Wahl Corporation Technical data developed at private expense	October 6, 1980
B-194222	Bogue Electric Manufacturing Company Misappropriation of proprietary data	June 18, 1979
B-194286	CompuServe Federal agency abused its discretion in extending closing date for proposals without informing prospective offerors	June 5, 1979
B-193546	American Nucleonics Corp. Technical discussions with offerors for R&D contract	March 22, 1979
B-191346	E-Systems, Inc. Documentation withheld by Air Force from protester but furnished to GAO	March 20, 1979
B-191466	A & J Manufacturing Co. Infringement of trade secrets and designs	November 8, 1978
B-192414	*Holasonics, Inc.* Proprietary contents of unsolicited offer for R&D effort may not be used as basis for solicitation or negotiations with other firms unless unsolicited offeror consents	October 17, 1978
B-190967	William Brill Associates, Inc. Wrongful termination of sole-source negotiations	August 7, 1978
B-190798, 1007	Pioneer Parachute Co., Inc. Contracting agency does not possess or have rights in technical data necessary for competitive procurement	June 13, 1978
B-177115	Goodyear Tire and Rubber Company Proprietary data and drawings	May 14, 1978
B-190571	Andrulis Research Corp. Misappropriation of proprietary unsolicited proposal	April 26, 1978
B-189361	Harvey W. Neeley Protesters alleged that agency acquired unlimited rights in technical data	March 31, 1978

B-190023	Francis & Jackson, Associates Solicitation included material proprietary to protester	January 31, 1978
B-187051	Chromalloy American Corporation ASPR 9-202.2(c) directs contracting officers to protect data regardless of whether it is proprietary or trade secret	
B-188541	Mercer Products & Manufacturing Co. Legal right to use data developed by third party	July 25, 1977
B-187406	ERA Industries, Inc. Rightful ownership of engineering data	July 1, 1977
B-189023	Worthington Pump Corp. Agency may use data supplied with restrictive legend to evaluate drawing so long as data is not released outside Government	June 7, 1977
B-187902	Applied Devices Corporation Justification for sole-source procurement based on difficulties in formulating adequate data package	May 24, 1977
B-187798	Axel and Deutschmann Offeror should be considered as approved where technical personnel approved offeror	May 12, 1977
B-187406	ERA Industries, Inc. GAO is not in position to adjudicate dispute between private parties concerning their respective rights in data	May 3, 1977
B-187051	Chromalloy American Corp. Whether protester's informal disclosure of trade secret to Air Force was in confidence	April 15, 1977
B-188631	Dillon Lumber Co., Inc. Low-bidder is nonresponsive because it has utilized protester's proprietary data	April 8, 1977
B-186958	York Industries, Inc. Proprietary data and unlimited rights	January 10, 1977
B-185724	E-Systems, Inc. Award in compliance with statutory provisions of Brooks Act	December 8, 1976

B-186597	Celesco Industries, Inc. GAO will not adjudicate the rights of two private parties with respect to proprietary data	August 30, 1976
B-186276	Maremont Corp. Minimum needs determination vs. procurement	August 20, 1976
B-186539	E. C. DeYoung, Inc. Inclusion of proprietary technical data in invitation for bids	July 26, 1976
B-186063	Curtiss-Wright Corp. Use of data supplied with restricted legend	July 19, 1976
B-185897	Data General Corp. Unauthorized disclosure of proprietary data	April 26, 1976
B-185267	Dumont Oscillascope Laboratories, Inc. Unlimited rights in data	April 16, 1976
B-179243	Remcor, Inc. Navy use of proprietary data	July 22, 1975
B-181736	United Computing Corp. Rights in technical data	January 16, 1975
B-179607	Baganoff Associates, Inc. Air Force RFP did not violate protester's proprietary rights	July 25, 1974
B-173677	Lockheed Propulsion Company Proprietary data	June 24, 1974
B-180252	Teledyne Inet Limited rights in data	May 22, 1974
B-176764	Havell Instruments, Inc. Violation of proprietary rights	May 14, 1974
B-180437	AiResearch Manufacturing Company Proprietary features of equipment	May 6, 1974
B-177436	T.K. International, Inc. Proprietary rights in data	September 10, 1973
B-178140	Cadre Corp. Proprietary data in a bid	July 16, 1973

B-176764	Howell Instruments, Inc. Proprietary data in solicitations	May 14, 1973
B-178353	Westinghouse Electric Corp. Unlimited rights in engineering drawings	April 31, 1973
B-176146	Crosby Valve & Gage Company Use of proprietary data in competitive procurement	January 22, 1973
B-174866	Lockheed Propulsion Company Release of proprietary formulas	December 4, 1972
B-176428	Thermo King Corp. Limited rights in technical data	November 10, 1972
B-175004	General Electric Company Data that is proprietary to the offerors	October 12, 1972
B-174633	Farwest Special Products Division, Inc. Government's right to data claimed to be proprietary	August 29, 1972
B-173146	Union Carbide Corp. Proprietary drawings used in solicitation	June 15, 1972
B-173677	Pratt & Whitney Aircraft Corporation Use of data in negotiations	March 31, 1972
B-173196 B-174035	The Goodyear Tire & Rubber Company Competition and patent rights, copyrights, trade secrets, 10 U.S.C. 2304(a)(10)	December 8, 1971
B-172901 B-173039 B-173087	The Bendix Corporation Data packages, part numbers, and interchangability of parts	October 14, 1971
B-173192	Beowulf Connector and Cable Corporation Disclosure of proprietary and confidential information	August 23, 1971
B-170698	Loe Industries Patent indemnity clause	May 4, 1971
B-170154(2)	Hollander Associates Data rights clause and proprietary data	March 30, 1971
B-170276	B.F. Goodrich Company Limited rights due to patent rights, copyrights, proprietary data	March 25, 1971
B-170543	Rocket Research Corporation Proprietary data	December 2, 1970

B-170680	Tasker Industries Proprietary data from proposals	November 24, 1970
B-168366	Aero Design Products Corporation Proprietary design, rights in technical data	February 25, 1970
B-167421	Volumetrics, Incorporated Award may not be made on the basis of brand name	January 23, 1970
B-167365	National Water Lift Company, Division of Pneumo Dynamics Corporation Proprietary data	November 14, 1969
B-166071	Breed Corporation Unlimited rights	September 18, 1969
B-165111	Regent Jack Manufacturing Company, Inc. Trade secrets, data rights	February 26, 1969
B-164655	Myer Labs, Inc. Rights in data	November 8, 1968
B-164418	Computer Measurements Company Patent infringement, proprietary data, limited rights	August 19, 1968
B-162399	Bendix Corporation Rights in technical data, proprietary data, unlimited rights	May 3, 1968
B-156134 B-156151 B-156174 B-156231 B-156762 B-157974	Canadian Commercial Corporation Proprietary data disclosure and protection	October 25, 1966
B-158865	Columbus McKinnon Corporation Proprietary data in proposal	September 26, 1966
B-158125	Precision Plating and Metal Finishing, Inc. Proprietary data	July 28, 1966
B-157726	Consolidated Electrodynamics Corporation Proprietary data	June 13, 1966
B-156959	All American Engineering Company Proprietary data, reverse engineering	December 6, 1965

B-157300	Pacific Infrared Systems Company Proprietary rights and data in proposals	November 19, 1965
B-155227	Airborne Research & Development Corp. Proprietary data	October 27, 1965
B-156152	The Firewel Company, Inc. Proprietary information and trade secrets, limited rights	May 28, 1965
B-154818	Fonestra Incorporated Trade secrets	November 16, 1964
B-154331	Airen, Incorporated Proprietary rights and reprocurement	October 12, 1964
B-153341	Eagle Crusher Company, Inc. Proprietary data in proposals	August 27, 1964
B-154141	Malaker Laboratories, Inc. Proprietary data in proposal obtained from another source	May 22, 1964
B-153497	Bradd, Wagner and Dodd Proprietary data in an invitation for bid	May 6, 1964
B-153144	The Cyril Bath Co. Proprietary data in proposals	January 31, 1964
B-151430	J. M. Beach Manufacturing, Incorporated Proprietary data and drawings in requests for bid	October 2, 1963
B-151273	Spencer-Safford Loadcraft, Inc. Interchangeability of parts versus specified manufacturer	July 5, 1963
B-148288	Robbins Aviation, Incorporated "Patent Pending" status of an invention, data related to and proposals	September 26, 1962
B-149295	Lewis, MacDonald & Varion Proprietary data in specifications for bids	September 6, 1962
B-148288	Robbins Aviation, Incorporated Proprietary data furnished in request for proposal	August 14, 1962
B-148575	Hi-Lo Engineering & Manufacturing, Inc. Proprietary rights in development and 100% developed at private expense	August 1, 1962

B-147509	Lear, Incorporated Holder of patent afforded no special status in contract award	July 27, 1962
B-148376	Specialty Electronics Development Corporation Proprietary rights argument to submit an exceptional bid	July 24, 1962
B-148288	Robbins Aviation, Inc. Proprietary data of part and whether the data is necessary for manufacture	June 1, 1962
B-147318	Aeronautics Corporation Pricing of data items as no cost	January 9, 1962
B-193711	Gayston Corp. Improper disclosure of proprietary data	May 15, 1961
B-143711	Gayston Corporation Proprietary protection for data at the time it was made available to the Air Force	December 22, 1960
B-141871	Clark Brothers Company Proprietary data submitted as part of proposal where nonrestricted data is desired constitutes a nonresponsive bid	March 15, 1960
B-138638	Universal Target Company Rights in data - unlimited	December 2, 1959
B-136543	DeLaval Steam Turbine Company Rights in data - unlimited not interpreted by the bidder correctly	August 1, 1958

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